

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

W. A. DREW EDMONDSON, in his)
capacity as ATTORNEY GENERAL)
OF THE STATE OF OKLAHOMA and)
OKLAHOMA SECRETARY OF THE)
ENVIRONMENT C. MILES TOLBERT,)
in his capacity as the)
TRUSTEE FOR NATURAL RESOURCES)
FOR THE STATE OF OKLAHOMA,)

Plaintiff,)

vs.)

) 4:05-CV-00329-TCK-SAJ

TYSON FOODS, INC., et al,)

Defendants.)

- - - - -

THE DEPOSITION OF JIM LANCE

PIGEON, produced as a witness on behalf of the
Plaintiff in the above styled and numbered cause,
taken on the 25th day of May, 2007, in the City of
West Siloam Springs, County of Delaware, State of
Oklahoma, before me, Lisa A. Steinmeyer, a Certified
Shorthand Reporter, duly certified under and by
virtue of the laws of the State of Oklahoma.

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W I T N E S S

P A G E

JIM LANCE PIGEON

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1 (Whereupon, the deposition began at
2 9:03 a.m.)

3 JIM LANCE PIGEON

4 having first been duly sworn to testify the truth,
5 the whole truth and nothing but the truth, testified
6 as follows:

7 DIRECT EXAMINATION

8 BY MR. GARREN:

9 Q Mr. Pigeon, would you please state your full
10 name and residence address to the court? 09:03AM

11 A Jim Lance Pigeon. Residence address is 24599
12 Van Fleet Road, Siloam Springs, Arkansas.

13 Q All right, and are you a married man?

14 A Yes.

15 Q Your wife's name is what? 09:03AM

16 A Michele, M-I-C-H-E-L-E.

17 Q And she lives there with you at that address?

18 A Yes.

19 Q Is that also the same address for your poultry
20 farm operation? 09:04AM

21 A Yes.

22 Q Excluding your poultry farm operation, are you
23 employed by any other entity or person?

24 A Yes.

25 Q And who or what is that? 09:04AM

1 A Green Country Farms.

2 Q How long have you been so employed?

3 A Since February of 2004.

4 Q Has that been a continuous employment?

5 A Yes.

09:04AM

6 Q What is your title or job description or
7 duties?

8 A I'm a broiler service manager I guess you
9 could say.

10 Q And what is it that you do as a broiler
11 service manager?

09:04AM

12 A I oversee normal day-to-day operations at the
13 poultry farms.

14 Q Is that all of the complexes, sixteen
15 complexes that he operates or something less?

09:05AM

16 A About half.

17 Q Is there someone else that does your duty for
18 the other half?

19 A Yes.

20 Q What's that person's name?

09:05AM

21 A Brian Burr.

22 Q Is that B-U-R-R?

23 A Yes.

24 Q How many hours a week do you work there?

25 A I don't have typically set hours. I'm a

09:05AM

1 salaried employee.

2 Q How much time do you spend on average then in
3 that job either daily or weekly?

4 A I'm guessing six to eight hours a day. It
5 varies.

09:06AM

6 Q Let's talk about your education starting with
7 high school. Did you graduate from high school?

8 A Yes.

9 Q Where?

10 A Kansas High School.

09:06AM

11 Q In what year?

12 A I believe that was in '89.

13 Q All right. Do you have any college education
14 or hours?

15 A Yes.

09:06AM

16 Q Tell me what that is.

17 A I have an animal science degree from Oklahoma
18 State University.

19 Q And the year you obtained that degree?

20 A 1992.

09:06AM

21 Q Do you have any other advanced degrees or
22 continuation of education hours?

23 A No.

24 Q Other than your deposition that you gave on

25 May 9th of 2006 in a case in Oklahoma County styled

09:06AM

1 Joe Reed versus State of Oklahoma, have you given a
2 deposition?

3 A Yes.

4 Q Other than this one?

5 A Yes.

09:07AM

6 Q Tell me any time that you have given another
7 deposition besides the one I referred to.

8 A There was one other.

9 Q What was it?

10 A I don't remember the exact time. I believe it
11 was in 2003.

09:07AM

12 Q And what did it involve?

13 A It was related to a grower suing Peterson
14 Farms.

15 Q Do you remember what court that was in?

09:07AM

16 A I do not.

17 Q Do you remember what the issues were?

18 A Not specifically.

19 Q Do you remember what was the purpose of your
20 testimony?

09:07AM

21 A I was a service tech at Peterson Farms at the
22 time of the said incident.

23 Q Do you remember who the person was that was
24 bringing the lawsuit?

25 A I believe it was Monte Staha.

09:07AM

1 Q Do you know how you spell the last name?

2 A S-T-A-H-A I believe.

3 Q Is he a resident -- where is he a resident at
4 the time?

5 A I don't know.

09:08AM

6 Q Does he live in Arkansas or Oklahoma?

7 A Arkansas.

8 Q Do you know which town?

9 A I don't know where his residence was. The
10 farms that he was associated with at that time was
11 in Gravette, Arkansas but I'm not 100 percent
12 certain on his residence.

09:08AM

13 Q Do you remember the name of the farm?

14 A I believe there was two farms and I'm not 100
15 percent on that as well. I believe it was Staha
16 Hatfield and the other farm was Monte Staha.

09:08AM

17 Q If you don't understand any question I
18 propound to you today, please ask me to reword it or
19 restate it so you do understand it. I'd just remind
20 you and ask you to verbalize all of your expressions
21 and responses here today rather than nodding your
22 head or saying uh-huh or huh-uh. Can you do that
23 for me?

09:09AM

24 A Yes.

25 Q All right. At any time you feel you need to

09:09AM

1 take a break, we're glad to accommodate you. So
2 it's not a trial by ordeal here. Let's try to get
3 through as quickly as we can. All right?

4 A Okay.

5 Q Let me hand you what's already been marked as 09:09AM
6 Exhibit No. 4 and I'll represent to you that's a
7 copy of the deposition. I'll ask you to look at
8 that and perhaps maybe I'll ask you this question
9 first: Did you review this deposition prior to
10 coming here today? 09:09AM

11 A Yes, I did.

12 Q When did you read it or review it?

13 A I finished reviewing it last night.

14 Q And did you read it in its entirety?

15 A Yes, I did. 09:10AM

16 Q Did you look at the exhibits that were also
17 attached to that deposition?

18 A No, sir, I did not.

19 MR. WILLIAMS: I've got the original with
20 the exhibits if you need it. 09:10AM

21 MR. GARREN: I may need it.

22 A I believe my copy does not have exhibits
23 attached.

24 Q The one I gave you this morning?

25 A No. The copy that I reviewed last night. 09:10AM

1 Q Oh, okay. This one does have the exhibits
2 attached so if we need to refer to it, it's
3 available.

4 A It appears to have, yes.

5 Q Did you at the time this deposition was given 09:10AM
6 to you, did you read and sign it originally in 2006?

7 A After the deposition was given?

8 Q Yes, sir. Did you have an opportunity to read
9 it and make any corrections you felt necessary?

10 A Yes, I did. 09:11AM

11 Q You then signed a statement saying that you've
12 read it?

13 A Yes, I did.

14 Q All right. We may refer to things that are in
15 that deposition but I'm going to try and avoid going 09:11AM
16 through that same -- all those same questions today.

17 Is there -- to your knowledge sitting here today but
18 in reference to when you completed that deposition,
19 is there any other change in your testimony you feel
20 you should have made in 2006 that you didn't make? 09:11AM

21 A Yes. There's a few items.

22 Q And what are those items that you feel are
23 different that should have been noted in 2006 when
24 you read it that weren't noted? You're looking at a
25 piece of paper. Is that something you prepared? 09:12AM

1 A Yes, it is.

2 Q All right.

3 A Would you like me just to read the items?

4 Q Let me just look at it. We might mark this

5 and make it an exhibit.

09:12AM

6 MR. WILLIAMS: That may be the quickest.

7 A That's kind of why I prepared it.

8 Q This Exhibit No. 5 is a document that you

9 prepared in anticipation of today's deposition?

10 A Yes, it is.

09:12AM

11 Q And you've referenced page and lines on three

12 different items where you think the answers should

13 be modified that's contained in the deposition,

14 which is Exhibit No. 4 sitting in front of you

15 today; is that correct?

09:12AM

16 A Yes.

17 Q All right. We may talk about those later

18 then. Other than these three changes that we see on

19 Exhibit 5, your testimony in that deposition is

20 truthful and accurate, isn't it?

09:13AM

21 A Yes, it is.

22 Q For the court tell us when you became a

23 poultry farmer for the first time.

24 A It was the first time on my own farm.

25 Q First time you ever grew poultry products

09:13AM

1 commercially?

2 A Well, I was raised on a poultry farm, but the
3 first that I operated my own farm was -- I believe
4 the birds were placed December of 1995.

5 Q Let's back up a little bit because I know you 09:13AM
6 have a father by the name or similar name of yours;
7 is that correct?

8 A Yes.

9 Q What is his name?

10 A James Pigeon. 09:14AM

11 Q Does he have a middle initial?

12 A E.

13 Q All right, and that's the farm that you grew
14 up on; is that correct?

15 A Yes, it is. 09:14AM

16 Q And that farm is located somewhere north of
17 where your current farm is?

18 A No. It's actually west.

19 Q West, I'm sorry.

20 A Yes. 09:14AM

21 Q Is that farm that your dad operates, is it the
22 same farm that he's always operated?

23 A Yes, it is.

24 Q Okay, and that farm, though, is outside the
25 Illinois River watershed, is it not? 09:14AM

1 A Yes, it is.

2 Q It's in the Eucha-Spavinaw watershed?

3 A Yes.

4 Q That's the farm where you grew up?

5 A Yes.

09:14AM

6 Q So you've been around the poultry business for
7 a long time; correct?

8 A Yes.

9 Q Was your dad raising poultry the whole time
10 that you were there that you remember?

09:14AM

11 A No, he was not.

12 Q Do you know when he started?

13 A I remember it to be in the mid to late '70's.
14 That's as accurate as I can be.

15 Q Has he always had four houses or was there a
16 change in different houses?

09:15AM

17 A No. He started with two houses. I don't
18 remember the exact date or time but he added two
19 additional houses.

20 Q Did he add those houses before you left living
21 there?

09:15AM

22 A No.

23 Q They were added afterwards?

24 A Yes.

25 Q Were they added after you became a broiler

09:15AM

1 grower in December of '95?

2 A No. It was prior to that.

3 Q Prior to that?

4 A Yes.

5 Q All right. Identify, if you would, please,

09:15AM

6 each of the integrators that you have worked for in

7 providing poultry growing operations.

8 A I don't think I understand.

9 Q Have you had more than one integrator that you

10 provided poultry products to?

09:16AM

11 A Yes.

12 Q All right. Name those entities.

13 A Peterson Farms and Tyson Foods.

14 Q What were the years that you operated a farm

15 for Peterson Farms?

09:16AM

16 MR. BOND: Object to the form.

17 A I believe I raised chickens for Peterson from

18 December of '95 to February or March of 2004.

19 Q And that was a continuous time frame that you

20 worked growing chickens, providing chickens to

09:16AM

21 Peterson Farms?

22 A Yes.

23 MR. WILLIAMS: What was the date again;

24 from when to when? I'm sorry.

25 MR. GARREN: He testified 12-95 to 2 or 3

09:16AM

1 of '04.

2 Q Did you immediately then begin producing
3 poultry products for Tyson on or about February or
4 March of '04?

5 A Yes, I did. 09:17AM

6 Q And have you continuously worked then for
7 Tyson -- have you continuously grown chickens for
8 Tyson since that time?

9 A Yes, I have.

10 Q Let me hand you what's been marked as Exhibit 09:17AM
11 No. 1 and this I'll represent to you is a copy of
12 the subpoena with the attachment that was provided
13 to your counsel. Have you seen this document
14 before?

15 A Yes, I have. 09:17AM

16 Q I'm going to refer you to the exhibit that's
17 attached to that document and I'd ask you to tell me
18 if there's any category by the number listed there
19 that would indicate documents you either did not
20 find or did not produce in your document production 09:18AM
21 pursuant to the subpoena.

22 A Okay. I'm sorry. Could you repeat your
23 question?

24 Q What I'm trying to determine is what documents
25 you didn't have or you didn't produce and then I'm 09:22AM

1 going to ask you questions such as have all other
2 documents then been produced. So I figured it would
3 be easier to go to the ones you know you didn't
4 produce or couldn't find and we can talk about
5 those.

09:22AM

6 A I apologize. It took me some time to skim
7 over that.

8 Q That's quite all right. I want you to be
9 accurate and complete, so do what you need to do.

10 Do you know which ones you did not produce or could
11 not find?

09:22AM

12 A Item 13 I did not produce.

13 Q Federal and state tax returns for the past
14 five years?

15 A Yes.

09:22AM

16 Q All right.

17 A Item 14 I don't remember in reviewing my
18 documents finding a grower contract from when I was
19 with Peterson. It may have been in those documents.

20 Q I'll represent to you I don't remember seeing
21 one from Peterson either in the ones produced.

09:23AM

22 A But I will state that all documents that I
23 have were produced in relation to that.

24 Q All right.

25 A And Item 15, all feed delivery records, there

09:23AM

1 was a point in time when I did not save all feed
2 delivery records.

3 Q But you produced all the ones you do have?

4 A Yes.

5 Q Okay. 09:23AM

6 A And Item 21, I have on occasion applied
7 herbicides but I don't have any records of any such
8 applications. It's more of a spot spray type
9 application.

10 Q And you've done that for more than one year? 09:24AM

11 A Yes.

12 Q Have you done it over a period of several
13 years?

14 A Yes.

15 Q Are those all on your list then that you made? 09:24AM

16 A Yes.

17 Q Then I'm going to ask you then all other
18 documents that you had in your possession that are
19 requested under the subpoena were produced to you --
20 produced by you through your counsel and then to me;
21 is that correct? 09:24AM

22 A All documents that I had in my possession,
23 yes.

24 Q Okay. Is there any place where documents are
25 stored that are records of your operations that you 09:24AM

1 did not access or review?

2 A No.

3 Q Are they all kept at your home basically?

4 A Yes.

5 Q Okay. Let me ask you this because there was

09:24AM

6 some conversation between counsel that you may not

7 produce all of your settlement sheets and in order

8 to avoid you having to produce a lot of extra

9 documents, did you produce all of those or just

10 selectively produce them as was discussed?

09:25AM

11 A I produced all of those documents.

12 Q You referred to in your deposition of May of

13 '06 to keeping a three-ring binder with records. Do

14 you still use that three-ring binder?

15 A Yes, I do.

09:25AM

16 Q Were all the documents contained within that

17 three-ring binder produced also?

18 A Not all the documents, no.

19 Q What documents were not produced?

20 A The documents that were not produced were fact

09:25AM

21 sheets that were given at educational meetings, but

22 all documents pertaining to actual records to the

23 farm operations were produced.

24 Q All right. So that I'm clear, when you say

25 the educational meetings, are those meetings that

09:26AM

1 you're required by the Oklahoma Department of
2 Agriculture to attend as a poultry growing
3 operation?

4 A Yes.

5 Q And those fact sheets would be ones that were 09:26AM
6 presented to you at those meetings?

7 A Yes.

8 Q Okay. So if we looked at your educational
9 record that ODAFF maintains for you, we would be
10 able to determine what kind of fact sheets you would 09:26AM
11 have had in your possession then; is that correct?

12 A I'm not certain on that.

13 MR. WILLIAMS: Counsel, I don't think
14 there's any problem with producing those if you want
15 them. I don't know that either one of us identified 09:26AM
16 those as responsive.

17 MR. GARREN: I'm not asking that we get
18 those.

19 Q Did you retain all of the fact sheets that you
20 received at any time from any educational meeting 09:27AM
21 that's required by ODAFF, if you know?

22 A I can't say with 100 percent certainty but I
23 would say that a large majority of those, yes.

24 Q Okay. You've also then produced all records
25 that you're required by the Oklahoma Registered 09:27AM

1 Poultry Feeding Act to maintain. Those have all
2 been produced, too; correct?

3 A Yes.

4 Q Do you retain all soil tests that you conduct
5 on your property?

09:27AM

6 A Yes.

7 Q And were those all produced?

8 A Yes, they were.

9 Q All right, and the same for all application
10 records. Did you produce all poultry waste land
11 application records also?

09:27AM

12 A Yes, I did.

13 Q Did anybody assist you in researching, looking
14 for and accumulating the records for this subpoena?

15 A No, they did not.

09:28AM

16 Q Did you meet with any person in advance of
17 this deposition to assist in preparing you for this
18 deposition?

19 A Yes, I did.

20 Q Who was that person or persons?

09:28AM

21 A My counsel.

22 Q That counsel you are referring to is Ken
23 Williams here today?

24 A Yes, it is.

25 Q And when was your meeting or meetings with Mr.

09:28AM

1 Williams?

2 A I believe I met with Mr. Williams on May 16th
3 to present the documents that were requested to him
4 and then again this morning.

5 Q Did you discuss any of the documents or review 09:28AM
6 any documents with him at the time on May 16th?

7 A No.

8 Q Did you discuss or review any documents with
9 him this morning?

10 A I believe we discussed a few items in the 09:29AM
11 previous deposition.

12 Q Are you talking about documents now?

13 A Documents -- just the deposition itself.

14 Q All right. Other than the deposition that you
15 reviewed you testified earlier, did you review any 09:29AM
16 specific documents in preparation for this
17 deposition?

18 A I don't know that I fully understand your
19 question.

20 Q Did you look at any documents besides reading 09:30AM
21 the deposition in anticipation or in preparation for
22 this deposition?

23 A Any of my own documents?

24 Q Any documents.

25 A No, unless you count previous depositions from 09:30AM

1 other parties.

2 Q Okay. Let's talk about that then. Tell me
3 what you're referring to as other depositions.

4 A I reviewed the deposition from Steve Butler.

5 Q All right. Any other depositions? 09:30AM

6 A And I reviewed not in its entirety but part of
7 Randy Allen's deposition.

8 Q Okay, and those were provided to you by Mr.
9 Williams?

10 A Yes. 09:30AM

11 Q Were there any exhibits attached to those
12 depositions you reviewed?

13 A No, there were not.

14 Q Are there any other documents or compilations
15 of documents that you looked at besides these two 09:31AM
16 depositions and your previous deposition?

17 A No.

18 Q Let's talk about -- other than your poultry
19 business, I know you're involved in a couple other
20 businesses besides working for Green Country Farms. 09:31AM
21 Can you tell the court what those are?

22 A I have a liquid cattle feed business, and my
23 wife owns and operates a small nursery and
24 greenhouse.

25 Q Is that nursery and greenhouse located at the 09:31AM

1 farm address you gave at the start of your
2 deposition?

3 A Yes, it is.

4 Q And do you operate the liquid cattle feed
5 business out of your home there that you described
6 earlier?

09:31AM

7 A Yes, I do.

8 Q Tell me just generally what that consists of,
9 the liquid cattle feed business.

10 A I purchased that business -- I believe it was
11 in 2003. It was an established business, and it's
12 basically dealing a dealership in a liquid cattle
13 feed product.

09:32AM

14 Q What's the name of the product?

15 A D & M Liquid Feed.

09:32AM

16 Q D & M or N?

17 A M.

18 Q So you don't manufacture it; you simply buy it
19 and resell it?

20 A Yes.

09:32AM

21 Q Is that pretty much the extent of what you do
22 for that liquid cattle feed business?

23 A Yes.

24 Q Is there a scope by region or geographic area
25 that you operate this business in?

09:33AM

1 A I don't think I understand.

2 Q You don't have a retail location I assume

3 since you work out of your house?

4 A No.

5 Q It's correct that you don't have a retail

09:33AM

6 location? It is correct that you do not have a

7 retail location; is that true?

8 A That is true.

9 Q So all the business is operated from your home

10 residence address?

09:33AM

11 A Yes, it is.

12 Q Do you mail this nation wide, region wide,

13 state wide, the product that you sell, or is there a

14 limitation in an area, geographic area that you must

15 sell within as part of the dealership?

09:33AM

16 MR. BOND: Object to the form.

17 A Again, I don't think I understand.

18 Q Are you limited in the area that you can sell

19 this product?

20 A I still don't think I fully understand and I'm

09:34AM

21 not trying to be difficult. I just -- are you

22 asking does the company I buy the feed from have

23 area limitations that I can deal in?

24 Q I can ask you that question if it makes it

25 easy for you to understand it, and generally that's

09:34AM

1 what would happen is you're limited by the company.

2 That's fine. Are there limitations imposed by the

3 company where you can sell the product?

4 A No, there are not.

5 Q And your actual conducting of this business,

09:35AM

6 what's the farthest away from your location that you

7 might sell or ship a product?

8 A I have delivered feed as far as Noel,

9 Missouri. I don't know exactly how many miles that

10 is.

09:35AM

11 Q That's fine. When you bought the business,

12 there was an established customer base?

13 A Yes, there was.

14 Q Has that customer base grown or enlarged since

15 you've been operating it?

09:35AM

16 A Very slightly.

17 Q Okay, but the farthest away you can recall

18 having a customer would be Noel, Missouri?

19 A Yes.

20 Q All right. How long has Michele operated the

09:35AM

21 nursery and greenhouse?

22 A I built the greenhouse last fall. I believe

23 it was completed in November.

24 Q And does she sell wholesale or retail?

25 A Retail.

09:36AM

1 Q Does she have a location other than the farm
2 that she sells from?

3 A Yes.

4 Q Where is that location?

5 A I don't know the address. She has an 09:36AM
6 agreement, if you will, with a local convenience
7 store to set up in their parking lot if she desires
8 and she also markets at the farmers market in Siloam
9 Springs.

10 Q Is the convenience store also in Siloam 09:36AM
11 Springs?

12 A No, it is not.

13 Q Where is it?

14 A I believe their address would be Colcord,
15 Oklahoma. It's rural Colcord. 09:37AM

16 Q Have we talked about all the businesses that
17 you operate now?

18 A I believe so.

19 Q Do you operate a cattle business?

20 A Yes. 09:37AM

21 Q All right. How long have you operated a
22 cattle business?

23 A I've had cattle most of my life.

24 Q Okay. From this location have you had cattle
25 on this location all the time? 09:37AM

1 A Yes.

2 Q All right. When did you first move to this
3 location?

4 A I believe it was April or May of '94.

5 Q What is the number of head you currently run? 09:37AM

6 A I usually run between 25 and 30 head.

7 Q Is that a number that's been consistent over
8 the years?

9 A Yes.

10 Q Are the cattle all contained on your property 09:38AM
11 located there on the Van Fleet Road?

12 A Yes.

13 Q You don't lease any other property in Oklahoma
14 or Arkansas to run your cattle?

15 A No. 09:38AM

16 Q What were the reasons for you becoming a
17 poultry grower when you did?

18 A I was looking for a way to be able to purchase
19 a piece of property and explored the best way to
20 make the payments on it. 09:39AM

21 Q Okay, and you believed the poultry business
22 was the way to do that?

23 A Yes, I did.

24 Q Let's talk then again about your cattle. Do
25 you provide your cattle any supplements? 09:39AM

1 A Yes, I do.

2 Q What kind of supplements?

3 A Occasionally I'll feed range cubes. I do feed
4 the liquid feed product that I deal in and I do
5 supplement hay in the winter time.

09:39AM

6 Q When you supplement the hay in the winter
7 time, what is the area or location that you would
8 normally acquire that hay?

9 A I acquire the hay from my dad.

10 Q So just west of your place then generally?

09:40AM

11 A Yes.

12 Q Is that where you get most of your hay or all
13 of your hay?

14 A All of my hay.

15 Q Do you know whether or not your liquid feed
16 product has any phosphorus or phosphorus compounds
17 in it?

09:40AM

18 A It is a complete balanced ration, so I'm sure
19 that it probably does.

20 Q How often do you feed your cattle this
21 product?

09:40AM

22 A It's fed free choice.

23 Q Free choice?

24 A Yes.

25 Q So it's left out all the time?

09:40AM

1 A Yes.

2 Q Is it a pellet, hard-type feed?

3 A No. It's a liquid.

4 Q I know the name. I was trying to confirm.

5 How do you control or make it available to the

09:41AM

6 cattle?

7 A Liquid feed is typically fed in a tank

8 designed for liquid feed. It has wheels that dip in

9 the feed. As the cows lick the wheels, the wheel

10 turns and pulls up more feed.

09:41AM

11 Q I see. Okay. Do you have in your possession

12 documents or information that would tell us the

13 components of the liquid feed product?

14 A Yes, I do.

15 Q Do you have any objection to making those

09:41AM

16 available?

17 A No, I do not.

18 Q The range cubes that you provide, do you buy

19 those commercially?

20 A Yes, I do.

09:42AM

21 Q Is there a brand you usually buy?

22 A I usually buy them from the farmers co-op in

23 Siloam Springs.

24 Q Have you ever looked to see what components or

25 constituents are contained within the range cube?

09:42AM

1 A In the past I have.

2 Q Do you know whether or not it contains any
3 phosphorus or phosphorus compounds?

4 A I can't say 100 percent but I'm sure they do.

5 Q Let's talk about the crops or pastures that 09:42AM
6 you have on your property. First off, how large is
7 your property?

8 A 82 acres.

9 Q What is the township, section and range for
10 that property? 09:42AM

11 A I believe it's Section 7, 26 East, 20 North,
12 7-20-26 I believe.

13 Q But it's Section 7; correct?

14 A Yes.

15 Q All right. This property is composed of some 09:43AM
16 woodlands and some pasture, would you agree, your
17 property that you just described?

18 A Would you restate that question?

19 Q Does your property have woodlands or wooded
20 areas on it in addition to pasture areas? 09:43AM

21 A Yes, it does.

22 Q Approximately how large is the pasture areas?

23 A Approximately 40 acres.

24 Q And those 40 acres are not all contiguous or
25 next to each other, are they? 09:43AM

1 A No, they are not.

2 Q All right. Describe your property with regard
3 to being flat. Does it have ridges, valleys, draws,
4 things of that nature?

5 A The pasture land or sections of the property 09:44AM
6 are pretty flat. The wooded areas are very hilly.

7 Q They rise above the pasture?

8 A No. They're lower than the pasture.

9 Q What's the nearest creek to your property?

10 A That would be Flint Creek. 09:44AM

11 Q And how far is the boundary of your property
12 to Flint Creek approximately?

13 A Approximately 100 yards maybe.

14 Q Okay. I do have, and we might just use this.

15 I've handed you Deposition Exhibit 6, which is an 09:45AM
16 aerial view of what I believe to be your property.

17 Does this area contain within the -- generally
18 within the yellow border pretty much outline your
19 property that we've just described?

20 A Generally, yes. 09:45AM

21 Q Okay. Is there any significant difference
22 that needs to be noted in your opinion in the
23 description of the boundary of this property, that
24 which is shown in the yellow line?

25 A Not significant, no. 09:46AM

1 Q Okay. So when we look at this piece of
2 property, the wooded area in the very middle is
3 actually then an area that is below the level of the
4 pasture that surrounds it; is that what you're
5 telling us?

09:46AM

6 A Not 100 percent of it but generally, yes.

7 Q Is the lowest area then that area to the south
8 boundary of your property?

9 MR. BOND: Object to form.

10 Q What I mean lowest, in the form of elevation,
11 would that be lower than the pasture?

09:46AM

12 MR. BOND: Object to the form.

13 A The property south of my property?

14 Q No, no, no. If you look at your property in
15 the middle and at the south border of your property,
16 I see a ravine there in the wooded area. Is that
17 area lower on the south of your property than it is
18 on the north of your property?

09:47AM

19 MR. BOND: Object to form.

20 A I would assume so, yes.

09:47AM

21 Q Okay. In your opinion does -- if water flows
22 from your property, does it flow towards Flint
23 Creek?

24 MR. HIXON: Object to form.

25 MR. BOND: Object to form.

09:47AM

1 A I would assume that it does.

2 Q All right. There's a blue line on this

3 Exhibit 6 at sort of the lower right-hand corner.

4 Is that a creek that you're referring to as Flint

5 Creek or is that some other tributary?

09:48AM

6 A That would be Flint Creek.

7 Q Okay. There's a red structure in the lower

8 right-hand corner of the field that's outlined or

9 the property that's outlined. Do you know what that

10 structure is?

09:48AM

11 A Yes, I do.

12 Q What is that?

13 A That's my shop.

14 Q Okay, and is your residence to the east of

15 that in the wooded area?

09:48AM

16 A Yes, it is.

17 Q And we see two poultry barns on the northeast

18 corner of this outlined property; is that correct?

19 A Yes.

20 Q And that's where you raise your poultry?

09:48AM

21 A Yes, it is.

22 Q Is the entrance to your property then right by

23 the barns?

24 A Yes, it is.

25 Q Okay. You have designated certain fields on

09:48AM

1 your property for purposes of land application

2 records for nutrient management plans, have you not?

3 A Yes, I have.

4 Q Why don't we go ahead and draw on this, if you

5 will. Let me see if I can find a pen that would

09:49AM

6 mark better. I'd ask you to use that red pen and if

7 you would draw the lines that would designate your

8 pastures as you know them to exist for purposes of

9 your nutrient management plan. Approximate is fine.

10 I just need to get some idea where these pastures

09:49AM

11 are by number.

12 A Just the pastures?

13 Q Yes, sir.

14 MR. BOND: I'll note an objection. If you

15 have an ODAFF map that already has these things on

09:49AM

16 here, I don't know why you need to draw them.

17 MR. GARREN: Thank you.

18 Q Go ahead and draw them, if you would, please.

19 A (Witness complied).

20 Q What field number is that that you've drawn?

09:50AM

21 A Want me to label it?

22 Q Yes, please. Just put a number in the middle

23 of it.

24 A (Witness complied).

25 Q Is that number two?

09:50AM

1 A Yes.

2 Q And then that would be -- the northwest corner
3 of that property is number one?

4 A Yes.

5 Q All right, and the southwest corner you've 09:51AM
6 labeled No. 3; correct?

7 A Yes.

8 Q Is there a fence between No. 1 and No. 3
9 fields?

10 A Yes, there is. 09:51AM

11 Q Have the designations of field numbers 1, 2
12 and 3 ever changed since you were required to so
13 designate them for ODAFF beginning in 1998?

14 MR. WILLIAMS: Object to the form.

15 A No, they have not changed. 09:51AM

16 Q All right. I asked you earlier have you
17 leased any property for purposes of running your
18 cattle. Let me ask it this way: Do you lease any
19 other land for any other purpose?

20 A No, I do not. 09:52AM

21 Q Do you have an ownership or partial ownership
22 in any other land?

23 A Yes, I do.

24 Q Where is that land and what is your interest
25 in it? 09:52AM

1 A I am a 25 percent owner in 500 acres
2 approximately six miles north of Little Kansas on
3 Highway 10.

4 Q Who are the other owners of that property?

5 A My dad, my brother and my sister. 09:52AM

6 Q Is there any poultry operations on that
7 property?

8 A No, there is not.

9 Q Do you know whether or not that property
10 receives land application of poultry waste? 09:53AM

11 A I believe it has some.

12 Q Has it received any from your operation,
13 poultry operation?

14 A No, it has not.

15 Q Is this property different than the property 09:53AM
16 that your dad uses for his poultry operation then?

17 A Could you restate that question, please?

18 Q I think it's probably been answered but I want
19 to make it clear. Your dad does not operate his
20 poultry barns on this 500 acres you've just 09:53AM
21 described?

22 A No, he does not.

23 Q What is the land used for, if anything?

24 A It's a cow-calf operation.

25 Q Whose operation is it? 09:53AM

1 A It's part of the partnership.

2 Q The partnership of whom?

3 A My dad, my brother, my sister and myself.

4 Q Okay, and this cow-calf operation is different

5 than the one you run on your property; is that

09:54AM

6 correct?

7 A Yes, it is.

8 Q How many herd or how many head is in that herd

9 that you run there generally?

10 MR. WILLIAMS: Object to form.

09:54AM

11 A Approximately 150 cows.

12 Q And the calves vary depending upon the

13 seasons?

14 A Yes.

15 Q Did I ask you, do you know whether your father

09:54AM

16 applies any poultry waste on that land?

17 A Could you restate that question?

18 Q Do you know if your father applies any poultry

19 waste from his operation to that land?

20 MR. BOND: Object to the form.

09:54AM

21 MR. WILLIAMS: Object to the form.

22 A There has been litter applied from his houses

23 to that property, yes.

24 Q When you use the term litter, what do you

25 mean?

09:55AM

1 A I mean manure for fertilizer from the houses,
2 the poultry operations.

3 Q Okay, and that would include the bedding
4 material?

5 A Yes, it would. 09:55AM

6 Q What is the source of water supply for the
7 personal use on your property?

8 A It would be well water or we also have rural
9 water available.

10 Q Do you know which district furnishes that 09:55AM
11 rural water?

12 A I believe it's Gentry Water District, Gentry,
13 Arkansas.

14 Q How many wells are there?

15 A On my property? 09:56AM

16 Q Yes, sir.

17 A There would be two.

18 Q What is the depth of each?

19 A One I think is approximately 500 feet and one
20 is approximately 1,300 feet. 09:56AM

21 Q Can you note for the Record from Exhibit No. 6
22 the general location of each well?

23 A You want me to mark it?

24 Q If you can, please. Just put a W.

25 A (Witness complied). 09:57AM

1 Q You've marked an area that is immediately
2 south of the south poultry barn; is that correct?

3 A Yes.

4 Q Towards the middle of that barn?

5 A Yes, it is.

09:57AM

6 Q And is that the 500 or 1,300-foot well?

7 A 1,300.

8 Q Where is the other well located?

9 A (Witness indicating).

10 Q You've marked this one then immediately north
11 and west of the red building, which you've
12 identified as the shop; is that correct?

09:57AM

13 A It should be just immediately north.

14 Q Immediately north of that shop?

15 A Yes.

09:58AM

16 Q And that's the 500-foot well?

17 A Yes, it is.

18 Q Have you ever had the water tested in either
19 of these wells?

20 A Yes, I have.

09:58AM

21 Q And when and -- when was the first time that
22 might have occurred?

23 A I don't recall exactly. The 1,300-feet well
24 was drilled early in '96, 1996, and I can't remember
25 if we tested it immediately after the well was

09:58AM

1 produced or if it was a couple of years after.

2 Q Okay, and when you say we, did you test it
3 yourself or did someone do it for you?

4 A I took the sample and turned it in to the lab
5 at Peterson Farms.

09:59AM

6 Q Okay, and did Peterson require that you obtain
7 this sample?

8 A They did not require that I do.

9 Q Did they ask and request of you to do so?

10 A No, they did not.

09:59AM

11 Q You just did it on your own?

12 A Yes, I did.

13 Q I notice you had a call. Do you need to take
14 a break or anything?

15 A No. I'll be fine.

09:59AM

16 Q Has the 500-foot well been tested also?

17 A Yes, it has.

18 Q Was that test also -- I'm sorry, was the
19 sample from that test provided to the lab at

20 Peterson Farms or someone else?

09:59AM

21 A I don't recall if I tested both of those wells
22 at the same time or not. The 500-foot well is used
23 very little.

24 Q All right. Does it supply the residence, the
25 500-foot well?

10:00AM

1 A It can, yes.

2 Q Do you draw from it for purposes most of the
3 time at the residence?

4 A No, I do not.

5 Q What water do you draw from or use at the 10:00AM
6 residence, the rural water or the 1,300-foot well
7 water?

8 A Typically it's the 1,300-foot well water.

9 Q Does the 1,300-foot well also supply the
10 chicken operation? 10:01AM

11 A Typically it does, yes.

12 Q Do you draw from the 500-foot well for
13 purposes of your chicken production?

14 A No, it does not.

15 Q Okay. 10:01AM

16 A I can but it does not, not typically.

17 Q When you first went into business, the poultry
18 business for Peterson Farms, did you have any choice
19 whether or not to keep or not keep the waste that's
20 produced from the chickens? 10:01AM

21 MR. TUCKER: Object to the form of the
22 question.

23 A I don't know that I fully understand what
24 you're asking.

25 Q Did you negotiate whether you could keep or 10:01AM

1 not keep the chicken waste that's produced in your
2 operation with the contract --

3 MR. TUCKER: Objection, mischaracterization
4 of poultry litter as waste.

5 MR. BOND: Object to the form. 10:02AM

6 A The poultry litter produced from the farm was
7 not negotiated by myself in the contract with
8 Peterson.

9 Q Did you want to keep or retain the poultry
10 waste that the bird produces in this operation? 10:02AM

11 MR. TUCKER: May I have a continuing
12 objection to your mischaracterization of poultry
13 litter as waste?

14 MR. GARREN: It's not a
15 mischaracterization. So just make your objection 10:02AM
16 and we'll go on.

17 MR. TUCKER: For the Record I'm going to
18 state that any time poultry litter --

19 MR. GARREN: Just state it as to form,
20 please, and let me -- 10:03AM

21 MR. TUCKER: So I won't interrupt your
22 whole deposition, Mr. Garren, just cool it for a
23 second. For the Record I want to make a statement
24 that every time Mr. Garren refers to poultry litter
25 as waste, as poultry waste, I object to the form of 10:03AM

1 the question. Thank you.

2 Q Do you understand what I refer to when I say
3 poultry waste, Mr. Pigeon?

4 A I'm assuming you mean poultry litter.

5 Q Does a bird produce excrement when it's fed? 10:03AM

6 A Most animals do.

7 MR. BOND: Object to form.

8 Q And that excrement usually falls to bedding
9 material that you have put into the floor of your
10 poultry barn, does it not? 10:03AM

11 A Yes, it does.

12 Q So when you combine the bedding material,
13 which is commonly referred to as litter, with the
14 poultry waste, which is excreted from the bird,
15 that's the material you refer to as litter; is that 10:03AM
16 correct?

17 MR. BOND: Object to the form.

18 MR. WILLIAMS: Object to the form.

19 A Poultry manure that is mixed with the bedding
20 material is what I'm referring to as litter. 10:04AM

21 Q Okay. So we're clear, when I use the term
22 poultry waste, I'm also referring to the excrement
23 and when mixed together with bedding material. Do
24 you understand that then?

25 A That's what I would call poultry litter. 10:04AM

1 Q If I use the term poultry waste, you
2 understand I'm referring to that?

3 A Yes.

4 Q All right. At the time that you contracted
5 with Peterson Farms, was there any representation
6 made by Peterson Farms or its agents to you about
7 the value of the poultry waste generated by their
8 birds?

10:04AM

9 MR. HIXON: Object to the form.

10 A I don't think I understand.

10:04AM

11 Q Did anybody ever tell you at Peterson Farms
12 that the poultry manure that's generated has value?

13 MR. HIXON: Object to form.

14 A I don't recall anyone at Peterson ever saying
15 that poultry litter, you know, what the value of
16 poultry litter was.

10:05AM

17 Q When you contracted with Tyson, did anybody at
18 Tyson tell you whether poultry manure had value
19 or -- let me just start over. When you contracted
20 with Tyson, did any Tyson representative tell you
21 what, if any, value poultry manure had?

10:05AM

22 MR. BOND: Object to the form.

23 A I don't recall anyone at Tyson stating what
24 the value of poultry litter was.

25 Q Did they represent to you that it had value?

10:05AM

1 MR. BOND: Object to the form.

2 A Not that I recall.

3 Q All right. Do you apply all poultry waste
4 from your two barns to your property at all times?

5 MR. BOND: Object to the form. 10:06AM

6 A I don't know that I fully understand what
7 you're asking.

8 Q Does poultry waste produced from your barns
9 ever go off your property?

10 A Go off? 10:06AM

11 Q Does it leave your property?

12 A Yes, it does.

13 Q And when it does, is it because you have sold
14 it or given it away; which?

15 A It's because I've sold it. 10:06AM

16 Q Okay, and recently you have sold some poultry
17 waste; is that correct?

18 A Could you define recently?

19 Q How about in the year 2007?

20 A No. 10:07AM

21 Q How about in the year 2006?

22 A I believe in 2006 I did sell some litter.

23 Q Do you recall what you sold it for?

24 A Dollars amounts?

25 Q Yes, sir. 10:07AM

1 A I don't recall.

2 Q Do you recall who you sold it to?

3 A I believe I sold that litter to Raymond
4 Tinney, which was funded through the grant, the
5 BMP's grant.

10:07AM

6 Q And you would have then filled out forms in
7 order to get that subsidy when you made that sale;
8 is that correct?

9 A I believe so, yes.

10 Q All right, and your testimony here today is
11 that you've not done that in 2007 but you did it in
12 '06?

10:08AM

13 A I believe that's correct.

14 Q All right. Do you know where Raymond Tinney
15 took that waste?

10:08AM

16 MR. BOND: Object to form.

17 A I believe I saw on some of the paperwork that
18 it went to a Robert Ross.

19 Q All right, and do you know that person?

20 A I do not.

10:08AM

21 Q Do you know where that person's location was
22 that it was delivered to?

23 A I do not.

24 Q That's not information you're provided when
25 you sell waste through the BMP's program?

10:08AM

1 MR. BOND: Object to form.

2 A No.

3 Q Other than in the BMP program, have you sold
4 waste in the past since you've operated your
5 operation there in Section 7?

10:09AM

6 A Yes, I have.

7 Q And when you sold it, who would you normally
8 sell it to?

9 A I have several times sold litter to Flint
10 Creek Cattle Company.

10:09AM

11 Q All right. Is that an operation near your
12 operation?

13 A Yes, it is.

14 Q All right, and when you sold it, did you
15 deliver it or did they come and pick it up?

10:09AM

16 A I hired a contractor to come in and clean the
17 houses and deliver the litter to Flint Creek Cattle
18 Company.

19 Q Do you remember who your contractor was?

20 A I've had multiple contractors over the years.

10:09AM

21 Q All right. So Flint Creek has been a fairly
22 constant customer if you sold litter or waste?

23 A They have been, yes.

24 Q All right. Is there any other customer that
25 you've sold to besides Flint Creek?

10:10AM

1 A Not that I recall.

2 Q How far away is the location that it was
3 delivered to?

4 A Can you be more specific?

5 Q If you were a crow and you flew there, how far 10:10AM
6 would that crow fly to get to where the waste is
7 delivered?

8 MR. WILLIAMS: Object to the form.

9 A Did you mean Raymond Tinney or --

10 Q Flint Creek Cattle Company. 10:10AM

11 A I'm sorry. Part of the Flint Creek Cattle
12 Company's ranch borders my property on the south and
13 some of their property is across the state line into
14 Arkansas.

15 Q All right. 10:11AM

16 A I don't have any record as to what part of the
17 ranch that litter was applied.

18 Q Okay, but to drive there, you would have to
19 drive north out of your property and then back to
20 the state line road area to get there; you can't 10:11AM
21 just drive to the south off your property and get to
22 where it needs to go, can you?

23 A No, you cannot.

24 Q Okay. Has the two-barn operation been
25 generally the same since you started until today in 10:11AM

1 the number of birds that you run through there?

2 A Pretty much so.

3 Q You grow broilers?

4 A Yes.

5 Q Generally you run about 42,000 birds per flock 10:12AM
6 for the two barns combined?

7 A Generally, yes.

8 Q All right, and you run on average about five
9 and a half flocks a year; is that correct?

10 A At the current time, yes. 10:12AM

11 Q And grow-out generally takes 50 to 51 days; is
12 that correct?

13 A Yes.

14 Q And you generally have somewhere between 12 to
15 14 days between flocks; is that a fair statement? 10:12AM

16 A Yes.

17 Q What is the size of the bird at the time it's
18 caught and taken to processing generally?

19 A Target weight is 6 to 6.1 pounds.

20 Q All right. That's the target weight. My 10:12AM
21 question to you is, what do you know to be the
22 normal weight of the birds?

23 A I can usually get birds to weigh better than
24 the target typically.

25 Q How big then is that? 10:13AM

1 A 620, 630.

2 Q When you say 620, 630 --

3 A 6.2 to 6.3 pounds average weight.

4 Q Would that average weight number be reflected

5 on your settlement sheets that you produced?

10:13AM

6 MR. BOND: Object to form.

7 A Yes, it would.

8 Q Would -- I can't remember. Did you produce

9 both settlement sheets for Peterson Farms and Tyson

10 if you recall?

10:13AM

11 A Yes, I did.

12 Q Does each integrator on their settlement forms

13 reflect the average weight that you produced when

14 you receive that form?

15 A Yes, it does.

10:14AM

16 Q All right. Who has the day-to-day operation

17 control of your facility?

18 MR. BOND: Object to form. Can I just note

19 one thing? We have a long time frame and multiple

20 integrators.

10:14AM

21 MR. GARREN: Correct.

22 MR. BOND: So I mean --

23 MR. GARREN: When it's important, I'll try

24 and distinguish the two.

25 MR. BOND: Okay.

10:14AM

1 Q Generally speaking who has the day-to-day
2 operational control of your facility?

3 MR. BOND: Object to form.

4 A Myself.

5 Q And has that changed at any time during the 10:14AM
6 time you started until the time of today?

7 A No, it has not.

8 Q All right. Let's -- I want to talk about both
9 your Peterson farm relationship and your Tyson
10 relationship, if you would, and contrast the two of 10:14AM
11 those integrators, if you would, so I'm going to ask
12 you some questions along those lines. First off,
13 with regard to Peterson Farms, what portion of any
14 contract did you negotiate with them for terms?

15 A With Peterson Farms? 10:15AM

16 Q Yes, sir.

17 A There wasn't any terms negotiated in that
18 contract.

19 Q Okay. With regard to contracts with Tyson,
20 has there been any negotiation of any terms of 10:15AM
21 contracts you've signed with Tyson?

22 MR. BOND: Object to form.

23 A No, there have not.

24 Q All right. Do both Peterson Farms and Tyson
25 supply and deliver the birds to you? 10:15AM

1 MR. WILLIAMS: Object to the form.

2 Q Let me preface it this way: I'm trying to
3 capture the entire time period that you've operated
4 and I'm trying to determine whether or not there's
5 any real distinction in the difference in the way
6 you've been operating with Peterson versus Tyson.

10:16AM

7 With that understanding, has there been -- do Tyson
8 and both Peterson supply and deliver the birds to
9 you to grow?

10 MR. BOND: Object to form.

10:16AM

11 MR. HIXON: Object to form.

12 A Yes, they do.

13 Q All right. Do they charge you to deliver
14 those birds?

15 MR. HIXON: Object to form.

10:16AM

16 MR. BOND: Object to form.

17 Q Does Tyson charge you to deliver the birds?

18 A I don't think I understand.

19 Q Do you pay them to receive those birds?

20 A Tyson and Peterson do not charge a delivery
21 fee.

10:16AM

22 Q All right.

23 A If that's what you're asking.

24 Q Do you at any time own the birds that Peterson
25 delivers to your location?

10:17AM

1 MR. WILLIAMS: Object to the form.

2 A I don't know whether it would be considered me
3 owning them or not. I don't think that I do.

4 Q Okay. Have you read your contract with
5 Peterson Farms at any time?

10:17AM

6 A I have at some time.

7 Q Have you read your contract with Tyson at any
8 time?

9 A I have at some point.

10 Q Do the birds that Tyson delivers, are they
11 owned by you or Tyson?

10:17AM

12 MR. WILLIAMS: Object to the form.

13 A I believe the birds are owned by the
14 integrator.

15 Q When the bird dies, whose responsibility is it
16 to dispose of the bird?

10:17AM

17 A It's my responsibility.

18 Q All right. Does Tyson pay you any money to
19 dispose of the bird?

20 MR. BOND: Object to the form.

10:18AM

21 A No, they do not.

22 Q Does Peterson pay you any money or assist you
23 to dispose of their birds when you have them?

24 MR. HIXON: Object to form.

25 MR. WILLIAMS: Object to the form.

10:18AM

1 A No. It was understood when I went into the
2 business that dead bird disposal was my
3 responsibility.

4 Q All right. Have either Tyson or Peterson at
5 any time picked up dead birds and disposed of them 10:18AM
6 for you?

7 A Could you define disposed of them for me?

8 Q Let's first do this. Has Peterson or Tyson at
9 any time picked up any dead birds from your farm and
10 removed them from your farm? 10:19AM

11 A No, they have not.

12 Q Does both Peterson and Tyson pick up the birds
13 at the end of grow-out?

14 A Yes, they do.

15 Q Are you charged a delivery or pick-up fee at 10:19AM
16 that time by either Tyson or Peterson?

17 A Not that I recall.

18 Q Does Tyson set the schedule of when you are to
19 receive birds?

20 A Could you state that question again? 10:19AM

21 Q Do you or Tyson set the time when the birds
22 are to be delivered to you?

23 A Tyson determines a delivery.

24 Q When Peterson delivered birds to you, did you
25 or Peterson deliver (sic) the time when the birds 10:20AM

1 are to be delivered?

2 MR. HIXON: Object to form.

3 A Peterson set the times that the birds would be
4 delivered.

5 Q When the birds are picked up, does Peterson or 10:20AM
6 do you set the time when the birds are picked up?

7 A The integrator sets the time that the birds
8 are picked up.

9 Q Is that the same for Tyson when they pick up
10 birds? 10:20AM

11 A Yes, it is.

12 Q Who determines the kind or quality of bird
13 that's delivered to you when Peterson delivers the
14 birds?

15 MR. HIXON: Object to form. 10:20AM

16 A Could you ask that question again?

17 Q Let me ask it this way: Do you get to go shop
18 for baby birds that are to be delivered to your farm
19 and pick them out?

20 A No. 10:21AM

21 Q So you have no choice of what kind or quality
22 of bird that's delivered to your growing operation;
23 is that correct?

24 MR. HIXON: Object to form.

25 MR. WILLIAMS: Object to form. 10:21AM

1 A I believe that every bird is of the same
2 quality when it's delivered.

3 Q Do you have any choice of what kind of bird is
4 delivered to your facility?

5 MR. HIXON: Object to form. 10:21AM

6 A Could you define kind?

7 Q Are there different kinds of species of
8 broilers?

9 A I'm assuming you're referring to breeds?

10 Q All right. Let's assume that then. Are there 10:21AM
11 different breeds of broilers?

12 A Yes, there are.

13 Q Do you have any choice which breed is
14 delivered to your location for growing purposes?

15 A No, I do not. 10:22AM

16 Q So that I'm clear, you don't go and shop and
17 pick out the birds that come to your location to
18 grow them out; is that correct?

19 A That's correct.

20 Q And that's the same for either Peterson or 10:22AM
21 Tyson?

22 A Yes, it is.

23 Q Does both Peterson Farms and Tyson deliver all
24 the feed that you use in feeding the birds during
25 the grow-out period? 10:22AM

1 MR. WILLIAMS: Object to the form.

2 A Yes, they do.

3 Q Do they charge you a delivery fee?

4 A Not that I'm aware of.

5 Q And that's the same for Peterson and Tyson;

10:22AM

6 correct?

7 A Correct.

8 Q Does Peterson and Tyson deliver all

9 medications that are required to be given to the

10 birds during grow-out?

10:22AM

11 MR. BOND: Object to form.

12 A Could you define medications?

13 Q What do you understand it to mean? Maybe I

14 can adopt yours.

15 A To me medications are antibiotics, treatments

10:23AM

16 for diseases or sicknesses or illnesses.

17 Q Do you or Tyson supply those medications that

18 you just described?

19 A Tyson would supply those medications.

20 Q When Peterson was your integrator, did you or

10:23AM

21 Peterson supply the medications you just defined?

22 A They would -- Peterson would supply those.

23 Q All right. Who supplies any vaccinations that

24 may be required for the birds that you grow?

25 MR. BOND: Object to form.

10:23AM

1 A The integrator would supply those.

2 Q Is that the same for Peterson and Tyson?

3 A Both integrators would supply those.

4 Q Who would supply the people that would -- who

5 would actually give the vaccinations to the birds?

10:24AM

6 A Tyson has a crew that vaccinates the birds and

7 the growers are supposed to be present to assist

8 them.

9 Q Okay. Does Peterson supply the people that

10 furnish the vaccination to the birds when you used

10:24AM

11 Peterson as an integrator?

12 A I believe a very similar procedure was used

13 from Peterson as well.

14 Q All right. If you require any veterinary

15 services for your birds when you are operating with

10:24AM

16 Tyson, who supplies the veterinary services?

17 A Under Tyson?

18 Q Yes, sir.

19 A Tyson would supply the veterinary services.

20 Q Is there any charge to you for that?

10:25AM

21 A No, sir.

22 Q Was there any charge to you for the

23 medications that are furnished to the birds?

24 A No, sir.

25 MR. BOND: Object to form.

10:25AM

1 Q When you operated with Peterson, who supplied
2 the veterinary services for Peterson for your birds,
3 for the birds that you were growing?

4 MR. HIXON: Object to form.

5 A Peterson would supply the veterinary services. 10:25AM

6 Q Would Peterson charge you for those services,
7 veterinary services that is?

8 A No, they would not.

9 Q Would Peterson charge you for the medications
10 that they supplied to the birds you were growing? 10:25AM

11 A No, they would not.

12 Q During the period of time of grow-out from the
13 time you received the chicks until they were caught
14 and removed; is that what you understand the term
15 grow-out to mean? 10:26AM

16 A Yes, it is.

17 Q During that time do field servicemen from
18 Peterson come to your farm?

19 A There were times they did, yes.

20 Q Okay, and do you pay for that service? 10:26AM

21 A I believe there was a time at Peterson there
22 was a charge for that service.

23 Q All right, and was that a service that you
24 requested?

25 MR. HIXON: Object to form. 10:26AM

1 A No. That was a service that was understood.

2 Q All right. So every time a service
3 representative came to your farm, you were charged a
4 fee; is that correct?

5 A Not every time, no. 10:27AM

6 Q Give me the times or reasons that you would be
7 charged and the reasons you would not be charged.

8 A Every flock was charged the same if I remember
9 correctly.

10 Q All right. So it was like an overhead 10:27AM
11 expense?

12 A Exactly.

13 Q And that was reflected on the settlement sheet
14 you received at the end of the grow-out?

15 A I believe so, yes. 10:27AM

16 Q Does Tyson have a similar charge you've
17 encountered since growing with Tyson?

18 A Not that I'm aware of.

19 Q And you don't recall whether Peterson did it
20 all the time or just some of the time? 10:27AM

21 A I would have to review my settlements to know
22 specifically.

23 Q Do you arrange for the time for when a service
24 rep will come to your farm to inspect or look at the
25 birds? 10:28AM

1 MR. BOND: Object to form.

2 A Not typically, no.

3 Q They typically, being the service rep, just
4 show up generally unannounced?

5 MR. BOND: Object to form.

10:28AM

6 A Generally unannounced.

7 Q And would that type of activity be the same
8 for Peterson and Tyson in your experience?

9 A There was a point in time that I worked for
10 Peterson as a service rep and I serviced my own
11 farm, but after my employment with them ended, there
12 was a service rep that would come similar to the way
13 Tyson does.

10:28AM

14 Q All right. Were you a service rep for
15 Peterson Farms the entire time that you grew for
16 them?

10:29AM

17 A No.

18 Q During the time that you were not a service
19 rep, did Peterson then send its own service rep to
20 see your farm?

10:29AM

21 A Yes.

22 Q When you were acting in the capacity of a
23 grower and service rep, did you fill out reports to
24 send to Peterson?

25 MR. HIXON: Object to form.

10:29AM

1 A I don't think I understand what you're asking.

2 Q Based upon the records that you've produced to
3 me, I see basic documents referred to as weekly
4 management reports and those are filled out by
5 service reps, are they not?

10:29AM

6 A Yes.

7 Q Did you fill those out when you were a service
8 rep for your own farm?

9 A Fill them out for my own farm?

10 Q Yeah. When you were acting in the capacity as
11 a service rep for Peterson and also growing for
12 them, would you fill out weekly service reports?

10:30AM

13 A No.

14 Q How would Peterson know what the condition of
15 your growing process was in?

10:30AM

16 MR. HIXON: Object to form.

17 A Occasionally I would invite my supervisor to
18 come out.

19 Q How often would that occur?

20 A I couldn't put times on it. I don't know.

10:30AM

21 Q Would it be fairly regular?

22 A No, not regular.

23 Q Would they come as much as once a week?

24 A No.

25 Q Would they come only if invited?

10:30AM

1 A Not necessarily.

2 Q So they might come, your supervisor might come
3 out not having been invited by you; is that a
4 correct statement?

5 A Sure. 10:31AM

6 Q How long were you a service rep for Peterson
7 Farms?

8 A Approximately ten years.

9 Q And do you remember when you first started and
10 ended? Either one is close enough for me to get it. 10:31AM

11 A I believe it was from early '93 to 2003.

12 MR. WILLIAMS: Next time it's convenient,
13 Counsel, could we take just a short break?

14 MR. GARREN: We can take it now and I'll
15 start up on this when we get back. 10:31AM

16 (Following a short recess at 10:31
17 a.m., proceedings continued on the Record at 10:43
18 a.m.)

19 Q Mr. Pigeon, talking again about the same
20 subject matter that we were on at the time that the 10:43AM
21 break was taken, when the service techs or service
22 reps come -- we'll start with Peterson. Do they
23 provide information to you instructing you or
24 advising you of changes or recommendations that need
25 to be made in your growing process? 10:43AM

1 MR. HIXON: Object to form.

2 A I'm sorry, could you ask that again?

3 Q Do the service techs advise you on changes you
4 should make in your growing operation when they come
5 to see you?

10:43AM

6 MR. HIXON: Object to form.

7 A Yes, they would.

8 Q Is that the same for both Peterson and Tyson
9 in your experience?

10 MR. BOND: Object to form.

10:44AM

11 A Yes.

12 Q When a service rep would come to your farm, is
13 it typical that on the report that they fill out it
14 shows where they have checked the temperature and
15 the controls of the temperature of the barns?

10:44AM

16 MR. BOND: Object to form.

17 A What are you asking?

18 Q Do the service techs check the temperature in
19 the barns when they come and inspect your
20 facilities?

10:44AM

21 A Yes.

22 MR. BOND: Object to form.

23 Q And does Peterson and Tyson both do that,
24 their service reps?

25 A I'm sure they do, yes.

10:44AM

1 Q And do the service reps for both Tyson and
2 Peterson when they inspect check the ventilation of
3 the barns?

4 MR. HIXON: Object to form.

5 A I'm sure they do, yes. 10:45AM

6 Q All right. Do you know that they do that or
7 are you just surmising?

8 A I assume that they all do, having been a
9 service tech myself.

10 Q And they leave reports sometimes checking 10:45AM
11 where they have checked the box where the
12 ventilation is good or poor for something like that;
13 correct?

14 A Sometimes they do, yes.

15 Q All right. When the service reps come, do 10:45AM
16 they check the water supply to the birds?

17 MR. HIXON: Object to the form.

18 A I can't say whether they do or not.

19 Q Do they indicate on any kind of form that they
20 have when they've left the form with you after an 10:45AM
21 inspection?

22 MR. HIXON: Object to form.

23 A I think there is a spot on the service report
24 for that, but to know exactly or specifically that
25 they have checked, I can't say. 10:46AM

1 Q If they've checked it that they have, you
2 would think they had, wouldn't you?

3 A I would assume they have.

4 Q But both Tyson and Peterson have some similar
5 form that they fill out indicating that they may
6 have checked water supply, do they not?

10:46AM

7 A I believe so.

8 Q And, likewise, when Peterson and Tyson service
9 reps come, do they also check the feed delivery
10 mechanism system for the birds?

10:46AM

11 MR. HIXON: Object to form.

12 A Again, having been a service tech myself, I
13 would assume that they do.

14 Q All right, and as far as you know, Tyson and
15 Peterson both do that?

10:46AM

16 MR. HIXON: Object to form.

17 A I would assume so.

18 Q Do you have any information that indicates
19 they haven't?

20 A Any information?

10:47AM

21 Q Yeah, or facts that would support that they
22 don't do that?

23 MR. HIXON: Object to form.

24 MR. BOND: Object to form.

25 A No.

10:47AM

1 Q All right. When service reps for either
2 Peterson and/or Tyson come, in your experience have
3 they left comments that might recommend certain
4 maintenance chores they would like to see you
5 perform?

10:47AM

6 MR. HIXON: Object to form.

7 A Sure.

8 Q Who supplies the bird catchers at the end of
9 grow-out in order to gather the flock for removal?

10 MR. BOND: Object to form.

10:47AM

11 A The integrator has crews for that purpose.

12 Q Are you charged a fee for those catchers to
13 come and pick up those birds?

14 A Not that I'm aware of.

15 Q And that's by either Tyson or Peterson?

10:48AM

16 A Correct.

17 Q Does Peterson Farms, when you worked for them,
18 did they provide you grower manuals or handbooks?

19 A I believe they did.

20 Q Does or did Tyson supply you grower manuals or
21 handbooks?

10:48AM

22 A Yes, they did.

23 Q Do the integrators, either Tyson or Peterson,
24 conduct any tests on the birds, such as blood tests
25 or other microbiology tests, while they're in your

10:48AM

1 possession?

2 MR. BOND: Object to form.

3 MR. HIXON: Object to form.

4 A Occasionally they do.

5 Q And are you charged a fee for that test or 10:48AM
6 that service?

7 A I don't believe so.

8 Q All right, and is that true for either
9 Peterson or Tyson?

10 A That's correct. 10:49AM

11 Q Does the integrator Peterson and/or Tyson in
12 your experience provide you with biosecurity
13 guidelines?

14 A Yes, they have.

15 Q Has Peterson at any time in your time that you 10:49AM
16 worked with them advanced any expenses that may have
17 been deducted from your settlement payment?

18 MR. HIXON: Object to form.

19 A I believe they did.

20 Q Has Tyson at any time advanced expenses to you 10:49AM
21 that was later deducted from a settlement payment?

22 A They have some, yes.

23 Q Give me an example of the kind of expenses
24 that Peterson would have advanced that you paid
25 back. 10:50AM

1 A Peterson has their own gas company, propane
2 company, and they would keep the propane tanks
3 filled during the flock and inventory those tanks at
4 the end of the flock and charge you for what was
5 used.

10:50AM

6 Q So the charge would come at the end with the
7 settlement check?

8 A Yes.

9 Q Or payment?

10 A Yes.

10:50AM

11 Q Did Tyson do the same, or I'm sorry, I didn't
12 mean to interrupt. Is there anything else by way of
13 example for expenses that they would have advanced
14 besides the LP gas you used?

15 A Yes. They would pay two flocks for a litter
16 treatment used during the winter. If I remember
17 correctly, I believe they paid the entire bill, and
18 then withheld half of the cost out of the settlement
19 check.

10:50AM

20 Q All right. So they basically split the cost
21 of that treatment?

10:51AM

22 A Yes, I believe that's correct.

23 Q Tell the court what that treatment is.

24 A There were multiple types of treatments that
25 could be chosen and each individual grower had the

10:51AM

1 choice of what to use.

2 Q And what's the purpose of the litter
3 treatment?

4 A To help control ammonia within the houses.

5 Q All right. Are there any other examples of 10:51AM
6 expenses that Peterson might have advanced?

7 A Occasionally there would be water additives
8 that might be requested delivered by the growers
9 that they may withhold from the settlement checks.

10 Q Any other examples that you can think of? 10:52AM

11 A Not that I can think of.

12 Q Does Tyson or has Tyson -- let me ask it this
13 way: Give me examples of those types of expenses
14 that Tyson would advance.

15 A They would be the same as for Peterson except 10:52AM
16 for the LP gas.

17 Q Okay. Are there any others that are different
18 than what you've listed for Peterson that Tyson
19 would advance that you haven't told us about?

20 A Not that I'm aware of. 10:52AM

21 Q Each integrator at the end of the flock,
22 shortly after the end of the flock would give you
23 what we referred to as a settlement statement; is
24 that correct?

25 A Yes. 10:53AM

1 Q And tell the court generally what that tells
2 you when you receive it.

3 A What the settlement report tells me?

4 Q Yes, sir.

5 A Basically tells how my birds grew and 10:53AM
6 performed in comparison to other flocks that sold
7 the same week that I sold them.

8 Q And it shows how much you're paid for that
9 flock?

10 A Yes. 10:53AM

11 Q Can you describe for me any significant
12 difference with your experience with Peterson Farms
13 and Tyson in their relationship with you in growing
14 birds?

15 A Could you restate that? 10:53AM

16 Q We've gone through a long list of things which
17 they all do, they both do.

18 A Exactly.

19 Q Tell me if there's something they don't do
20 that's the same in your experience. Can you think 10:54AM
21 of any difference?

22 A In what regards?

23 Q Anything in your growing operation or
24 relationship with the integrator.

25 A Nothing significant. 10:54AM

1 Q Are you through?

2 A That I can think of.

3 Q Okay. Let me ask you this: When you were
4 associated with Peterson Farms, did they require you
5 to have a sign that said Peterson Farms?

10:55AM

6 MR. HIXON: Object to form.

7 A I don't know that it was required.

8 Q Did they provide you a sign?

9 A Yes.

10 Q And does Tyson provide you a sign when growing
11 for Tyson?

10:55AM

12 A Yes.

13 Q Does either or both integrators provide you a
14 sign with regard to biosecurity concerns?

15 A Tyson has provided me a sign.

10:55AM

16 Q Do you recall Peterson ever providing you one?

17 A At the time I was with Peterson I don't recall
18 any biosecurity signs being given out.

19 Q I'm going to give you, sir, this notebook that
20 has documents in it that I'll represent to you are
21 in part from the documents -- in part some of the
22 documents that you provided pursuant to the subpoena
23 and you'll remember and notice that there are Bates
24 numbers at the lower right-hand corner --

10:56AM

25 A Yes.

10:56AM

1 Q -- that shows Pigeon numbers. The actual very
2 first page is a document that --

3 MR. BULLOCK: Do we have some extra copies
4 of these?

5 MR. GARREN: There's two sets there. 10:56AM

6 Q I'll represent to you that the first page of
7 No. 2 does have another document you didn't provide
8 to me but it was apparently provided to the State
9 some time ago in your prior deposition and it's
10 marked as an Exhibit 8 from that prior deposition. 10:57AM

11 A Uh-huh.

12 Q What we're going to do, Mr. Pigeon, is I'm
13 going to go through these and ask you certain
14 questions about these documents and we'll refer to
15 the page number in order to find where we're going. 10:57AM

16 They're in numerical order but they may skip numbers
17 because I didn't bring all of your documents. I'd
18 ask you -- we will skip around, so I apologize in
19 advance. I'll ask you to look at Page 1902. At
20 Page 1902 of this exhibit there is a Peterson Farms 10:58AM
21 management guide dated 9-8-03; do you see that?

22 A Yes.

23 Q Do you recall having that in your documents?

24 A I believe so, yes.

25 Q Do you recall seeing it when you worked for 10:58AM

1 Peterson?

2 A I think so.

3 Q All right. Is this something that Peterson
4 gave to you?

5 A Since it has Peterson Farms at the top, I 10:58AM
6 would assume, yes, it does.

7 Q Okay. Looking at the second paragraph
8 underneath the chart, it says and I'll read, houses
9 are to be decaked between every flock; do you see
10 that? 10:59AM

11 A Yes.

12 Q Is that something that you were supposed to do
13 when you worked for Peterson?

14 MR. HIXON: Object to form.

15 MR. WILLIAMS: Same objection. 10:59AM

16 A That's something that was recommended.

17 Q Did you in fact do that?

18 A I can't say with 100 percent certainty that
19 the time period I was with Peterson that I did
20 decake between every flock. 10:59AM

21 Q Generally is that what you did do, though?

22 A Generally, yes.

23 Q Would you preheat a house 48 hours in cool
24 weather and 24 hours in warm weather prior to the
25 placement of any chicks? 11:00AM

1 A I would sure do my best.

2 Q Okay, and in doing so, was it your goal to
3 reach the temperature settings that you see on the
4 chart up above?

5 A At least those temperatures, yes. 11:00AM

6 Q Looking at the next page, there's a Page 1906
7 and this is a document from Tyson dated December
8 2004. Do you recall seeing that document?

9 A Yes, I do.

10 Q And if you would, read the first sentence of 11:00AM
11 that. Read it to the court.

12 A There has been some confusion about what birds
13 are to be picked up by the catch crews and I would
14 like to clarify this.

15 Q Who was the person writing this letter? 11:01AM

16 A Appears to be Doug McLoud.

17 Q His position with Tyson is what?

18 A Live production manager.

19 Q Do you have any dealings with him yourself or
20 have you had as a grower? 11:01AM

21 A I have had some, yes.

22 Q All right, and do you recall the confusion
23 that he addresses in this letter?

24 A This appears to be a letter that was sent to
25 all broiler growers, and I don't remember 11:01AM

1 specifically having confusion myself.

2 Q Did you then in fact do what this letter was
3 requiring the growers to do?

4 A Absolutely.

5 Q All right, and that's the way you've done it 11:01AM
6 for Tyson?

7 A Yes.

8 Q Let's skip back to Page 1941. There's another
9 document from Tyson dated October 1, 2004.

10 MR. BOND: Which number, Rick? 11:02AM

11 MR. GARREN: 1941.

12 Q Do you see that document?

13 A Yes, I do.

14 Q I want you to look through that document and
15 kind of familiarize yourself with it. I don't know 11:02AM
16 that you have to read it in its entirety but feel
17 comfortable enough that you know what's there.

18 A Okay.

19 Q The last sentence of the first paragraph says,
20 and I'll read, I would like to review some practices 11:03AM
21 essential for maintaining good biosecurity for your
22 farm; do you see that statement?

23 A Yes, I do.

24 Q And do you see the eight practices that are
25 outlined there? 11:03AM

1 A Yes, I do.

2 Q And do you understand those are things you
3 should do?

4 A Yes.

5 Q And do you follow that recommendation or these 11:03AM
6 practices that are considered essential?

7 A To the best of my ability.

8 Q What do you understand would be the
9 consequence if you didn't?

10 MR. BOND: Object to the form. 11:04AM

11 A I would understand the consequence to be that
12 I would be putting my farm or my flocks at risk of
13 disease contamination.

14 Q Okay. What do you understand the consequences
15 to be then if Tyson knew you were not following one 11:04AM
16 or more of these practices?

17 MR. BOND: Object to the form.

18 MR. WILLIAMS: Object to the form.

19 A Only that I would be subjecting my farm or my
20 flock to potential diseases and infections. 11:04AM

21 Q If you were not following these practices,
22 would Tyson deliver birds to you for grow-out?

23 MR. BOND: Object to the form.

24 MR. WILLIAMS: Object to form.

25 A I don't see anywhere on this document that 11:05AM

1 states that.

2 Q What's your belief?

3 MR. BOND: Object to the form.

4 A I believe that the consequences would be I

5 could possibly subject my flock to potential 11:05AM

6 diseases or harm.

7 Q And if you did that, do you believe Tyson

8 would continue to supply birds to you?

9 MR. BOND: Object to the form.

10 MR. WILLIAMS: Object to the form. 11:05AM

11 A I don't think I understand.

12 Q Would Tyson risk giving you birds if you

13 didn't follow these essential practices of

14 biosecurity?

15 MR. BOND: Object to the form. 11:05AM

16 MR. WILLIAMS: Same objection.

17 A I don't believe that it would be solely based

18 upon this list here.

19 Q Would these eight items be important

20 considerations? 11:06AM

21 MR. BOND: Object to the form.

22 MR. WILLIAMS: Object to the form.

23 Q Let me put it this way: Would these eight

24 items be important considerations for Tyson to

25 determine whether or not they would place birds with 11:06AM

1 you?

2 MR. BOND: Object to the form.

3 MR. WILLIAMS: Object to the form.

4 A I'm sure it would be used in their
5 consideration.

11:06AM

6 Q Okay. Can you tell me today, sir, under oath
7 that you would believe Tyson would give you birds if
8 you didn't follow all eight of these essential
9 practices?

10 MR. WILLIAMS: Object to the form.

11:06AM

11 MR. BOND: Object to the form.

12 A I can't say with 100 percent certainty but I
13 believe they probably would.

14 Q So if you didn't follow these eight practices,
15 you believe they probably would deliver birds to you
16 to grow out; is that your statement under oath?

11:07AM

17 A I don't believe it would solely be based upon
18 this list of items.

19 Q What other items would be in your opinion
20 considered?

11:07AM

21 A Flock performance, flock history.

22 Q Okay. Anything else?

23 A I would say that would probably be the main
24 considerations.

25 Q I believe you testified but so I'm clear, you

11:07AM

1 basically follow these practices today, do you not?

2 A To the best of my ability.

3 Q And you have done so the entire time you've

4 grown for Tyson; correct?

5 A The best that I can.

11:08AM

6 Q Well, tell me where you might not have done

7 something here on this list.

8 A For one thing I see there, I may not always

9 change clothes or boots before I leave the farm.

10 Q Anything else?

11:09AM

11 A Not that I see.

12 Q Okay. That's something that Tyson wouldn't

13 necessarily know, would they?

14 A Not necessarily.

15 Q All right. Let's look then and go to Page

11:09AM

16 1980 in this exhibit. You'll find a weekly growing

17 management report. Do you see it there, sir?

18 A Page 1980?

19 Q Yes, sir.

20 A Yes.

11:10AM

21 Q I see a date at the top 3-8-04.

22 A Uh-huh.

23 Q This then would be a Tyson form?

24 MR. BOND: Object to the form.

25 Q I'll ask it this way: Do you know whether

11:10AM

1 this is a Tyson or Peterson form based upon the date
2 we see on it?

3 A I believe it's a Tyson form.

4 Q Okay. Is this an example of a service rep's
5 form on a weekly visit to your farm that they would
6 fill out, that is, the service rep would fill out?

11:10AM

7 A It's an old form but, yes, it's an example of
8 a form.

9 Q Do you see there where it looks at areas of --
10 let me restate and start over. It has several
11 categories that have check boxes, does it not?

11:11AM

12 A Yes.

13 Q One of the categories deals with the feeder
14 height and depth; do you see that?

15 A Yes.

11:11AM

16 Q And they've checked it whether it's okay or
17 low or high, haven't they?

18 A Yes.

19 Q So if you have got a check that said low or
20 high, what would you do?

11:11AM

21 A Probably make a visual inspection of the
22 feeders and --

23 Q Make an adjustment?

24 A Make an adjustment.

25 Q And then you see it's got a category under

11:11AM

1 that that says water; do you see that?

2 A Yes.

3 Q And apparently they checked the height, the

4 pressure, the riser tubes, whether they're clean,

5 and a flushing program. Is that something that

11:11AM

6 you're familiar with as a service rep having

7 checked?

8 MR. WILLIAMS: Object to the form.

9 A Yes, I'm familiar with that type of --

10 Q They're checking some details here about how

11:12AM

11 your farm is operating, aren't they?

12 A Yes.

13 Q They also check litter. There's a box for

14 litter, whether it's caked or damp. Can you tell

15 the court what the difference is?

11:12AM

16 A Caked litter would be where there's a crust of

17 litter on the top surface. That's basically --

18 Q And that results from what?

19 A There's multiple things that could cause that,

20 water line height, pressure, the time of year,

11:12AM

21 proper ventilation, bird health.

22 Q Looking again at this form, they also have a

23 category for lighting. They check the lighting,

24 too, don't they?

25 A Yes.

11:13AM

1 Q All right. Then in the next column there's a
2 category for ventilation and there are four
3 different or actually there's seven different
4 factors it looks like they look for in ventilation
5 to the house, do they not?

11:13AM

6 A Yes.

7 Q They indicate to you whether they think you
8 are doing good or in some cases poor or something
9 else, don't they?

10 MR. BOND: Object to form. That's not what
11 it says. Doesn't relate to what he is doing.

11:13AM

12 Q Let's talk about that then. It has an
13 indication for temperature and the box is either
14 good, hot or cold. Who controls the temperature of
15 the house?

11:13AM

16 A I've got a computerized controller that
17 controls the temperature.

18 Q Who controls that computer?

19 A I do.

20 Q And you set the gauges or the temperatures
21 that that computer tells the house to run, does it
22 not -- don't you?

11:14AM

23 A I'm the one that programs the controller, yes.

24 Q All right, and, likewise, you're controlling
25 through the computer the temperature ranges, are you

11:14AM

1 not?

2 A Yes.

3 Q All right, but notwithstanding, the service
4 rep has checked the details of that when they make
5 an inspection, haven't they?

11:14AM

6 A Yes.

7 Q And if they checked cold or poor, would you
8 make an adjustment?

9 MR. WILLIAMS: Object to the form.

10 A I would certainly assess the conditions
11 myself.

11:14AM

12 Q And in some instances make an adjustment or
13 not?

14 MR. BOND: Object to the form.

15 A I would assess the situation and make a
16 decision from that.

11:14AM

17 Q Okay. Sometimes you might adjust; sometimes
18 you might not; is that what you're telling the
19 court?

20 A Yes.

11:14AM

21 Q And this particular weekly growing management
22 report we see in the upper right-hand corner,
23 whether they talked to the grower, they circled yes
24 or no. In this case they did not talk to you; is
25 that what you see there?

11:15AM

1 A Yes.

2 Q Then we've got another portion of this form
3 that talks about corrective actions and comments,
4 and there is one written in this particular form; do
5 you see that?

11:15AM

6 A Yes.

7 Q It says you need to hook up curtain -- does
8 that say drops?

9 A Yes.

10 Q Do you know whether or not you did in response
11 to that corrective action?

11:15AM

12 A I think I probably did.

13 Q All right.

14 A That's usually something that's easily
15 forgotten when you place birds and it's nice to have
16 a reminder to do that.

11:15AM

17 Q All right. Let's look at Page 2009, if you
18 would, of the same exhibit. This does tell us it's
19 a Tyson Foods, Inc., form and it's referred to as a
20 chick placement ticket. When do you receive this
21 ticket?

11:16AM

22 A The day birds were placed in the houses.

23 Q Who fills out this form?

24 A The driver of the truck that delivers the
25 chicks I assume.

11:16AM

1 Q All right, and your signature appears on there
2 above the grower's signature line?

3 A Yes.

4 Q This, too, has some detailed checklists, does
5 it not?

11:16AM

6 A Yes.

7 Q And is the delivery person, the one driving
8 the truck, the one that makes that inspection?

9 A Yes.

10 Q And there are numerous things here that are
11 inspected. Has there ever been an occasion where
12 you didn't pass that inspection list and they didn't
13 deliver the birds?

11:16AM

14 MR. BOND: Object to form.

15 A No.

11:16AM

16 Q Does -- has Peterson in your experience had a
17 similar checklist before they delivered the birds
18 that they would check conditions of the house or the
19 operation before delivery?

20 A Yes.

11:17AM

21 Q Have you ever had an occasion that they would
22 either delay or not deliver chicks to you because of
23 some issues with regards to the preplacement
24 checklist?

25 MR. HIXON: Object to form.

11:17AM

1 A Not that I recall.

2 Q You know in advance, do you not, sir, or have
3 been instructed in advance of certain conditions
4 that the house should be in prior to placing the
5 chicks; is that a fair statement?

11:17AM

6 A Absolutely.

7 Q That's maybe in fact included in your grower
8 manual or handbook?

9 A Yes, I'm sure it is.

10 Q All right. Let's look at Page 2149, if you
11 would, and ask you to read that letter from Tyson
12 dated March 10, 2005.

11:17AM

13 A Want me to read it?

14 Q Yes, sir. You don't need to read it out loud.

15 Just read it to yourself so you are familiar with
16 its contents.

11:18AM

17 A I'm very familiar with it.

18 Q All right. Tell me what is intensified
19 management status.

20 A It's when I believe two flocks, two
21 consecutive flocks have settled poorly and they're
22 looking to either improve the performance of the
23 flock.

11:18AM

24 Q So you're put on a special status at this
25 point; is that correct?

11:18AM

1 MR. BOND: Object to the form.

2 A I guess you could say that.

3 Q All right, and as a result of your having had
4 what you called flock settled poorly, explain to me
5 what that means.

11:18AM

6 A As it states here in the letter, that if you
7 have two consecutive flocks that have a higher cost
8 than the four hundredths of a cent higher than
9 average, then that's what would get you in the risk
10 of being put on this improved management program I
11 believe is what it's called.

11:19AM

12 Q As a result of this letter, what changes did
13 you have to make in your operation?

14 MR. WILLIAMS: Object to the form.

15 A Only thing that comes to mind that I might
16 have changed during that would have been maybe to do
17 a thorough water line cleaning within the house.
18 Other than that, I tried to do the best job I could
19 do all the time.

11:19AM

20 Q Sure. Have you ever been placed on intensive
21 management status?

11:20AM

22 A Prior to this letter?

23 Q Yes.

24 A No.

25 Q Have you ever been placed on it since this

11:20AM

1 letter?

2 A No.

3 Q How long did your -- what period of time were
4 you on intensive management status?

5 MR. BOND: Object to the form. 11:20AM

6 MR. WILLIAMS: Object to the form.

7 A I would have to look back at the settlements
8 but I believe it was just for that two-flock period.

9 Q What happens if you don't improve?

10 MR. BOND: Object to the form. 11:20AM

11 A Without reviewing the actual procedure for
12 that program, I think -- I believe that after -- I
13 think it's two more flocks or maybe three of having
14 high, you know, higher than this four-tenths of a
15 cent higher than average cost, I believe the 11:21AM
16 procedure is to meet with the broiler manager and
17 the service rep for the farm and discuss things that
18 might be done or changed, improved upon to better
19 the flock's performance.

20 Q And if those aren't done, does Tyson then 11:22AM
21 refuse to deliver birds?

22 MR. BOND: Object to the form.

23 Q If you know.

24 A If those aren't done, then I would assume,
25 yes, it would be. 11:22AM

1 Q Does Peterson have a similar type program that
2 is described here or that you described to the court
3 in your experience working with Peterson?

4 MR. HIXON: Object to the form.

5 A In my experience they did have a similar 11:22AM
6 program.

7 Q Okay. Let's go back a page to Page 2136, if
8 you would, sir. This is a form that has your name
9 on it in handwriting that says ILT, litter clean-out
10 guidelines for growers dated 6-2-06. Based upon the 11:22AM
11 date of that form, is it your understanding this
12 would be a Tyson form?

13 A Yes.

14 Q Okay, and can you tell me generally what is
15 the purpose of this form? 11:23AM

16 A Generally it was -- I believe it was written
17 to give the growers a guideline as to what they
18 could do to help aid in the eradication, if you
19 would, of the LT virus that we were being infected
20 with at the time. 11:23AM

21 Q How did you get this form?

22 A My service tech left it on the farm.

23 Q Did he discuss it with you when he delivered
24 it?

25 A I believe he probably did, which would be 11:23AM

1 indicated by the line and the stars noted on the
2 form.

3 Q All right. Under the provision that says
4 guidelines for disease control between flocks for
5 each group that are cleaning or caking out, do you
6 see there's a Step 6 and it says no movement of
7 litter off farm. What does that mean?

11:24AM

8 A That means to prevent or I would assume that
9 that means to prevent further spreading the disease,
10 they do not want any litter moved off the farm.

11:24AM

11 Q Then it goes on to say if litter must be
12 removed, it must be placed in a stacking shed or
13 piled and covered for a minimum of 21 days prior to
14 leaving; do you see that?

15 A Yes.

11:24AM

16 Q At June 6th, 2006, did you have a stacking
17 shed?

18 A No, sir.

19 Q Did you have one prior to that time at any
20 time?

11:24AM

21 A Prior to 2006?

22 Q Yes, sir.

23 A No.

24 Q Was your farm infected with LT disease at some
25 time?

11:25AM

1 A Yes, I believe it was.

2 Q What year was that; was it sometime in 2005?

3 A I believe it was. Again, I'd have to look at
4 some other documents.

5 Q It was before this date; we know that; 11:25AM
6 correct?

7 A I believe so, yes.

8 Q And at that time did you come under the same
9 kind of requirements regarding no movement of litter
10 or stacking it into a shed as this requires here? 11:25AM

11 MR. BOND: Object to the form of the
12 question.

13 A I'm not 100 percent certain, but just from my
14 recollection I believe I had seen one of these forms
15 or something similar prior to that date. So this 11:25AM
16 may be an updated copy. I'm not 100 percent certain
17 on that.

18 Q As a result of suffering the LT disease on
19 your farm at the time that it occurred, what
20 different treatments or handling of the poultry 11:26AM
21 litter or waste did you have to employ?

22 MR. BOND: Object to the form.

23 A I believe I followed this section that has the
24 stars by it, which would include piling the litter
25 or winrowing it within the house, the chicken house 11:26AM

1 itself and allowing the litter to in a sense compost
2 or heat up in an effort to kill any virus that may
3 still remain in the litter. The litter was then
4 respread on the floors and leveled, and we sprayed a
5 disinfectant on the litter, which was another effort
6 to kill any diseases or viruses, bacterias that may
7 be present, and if I remember correctly, the houses
8 were heated as hot as we could get them for the time
9 of year for I believe it was three or four days,

11:27AM

10 which was another effort to rid the houses or litter
11 of any potentially harmful viruses or bacterias.

11:27AM

12 Q Those three things that you just described,
13 you don't do those three things normally when you
14 remove litter or waste from the house, do you?

15 A Absolutely not. That's a lot of work.

11:28AM

16 Q And it takes a period of time, too, as you've
17 described, does it not?

18 A It takes a lot of time, yes.

19 Q Was the LT infection that your flock
20 encountered limited to a single flock?

11:28AM

21 A I believe it was, yes.

22 Q Was it in both houses or one?

23 A It was mainly infected -- it mainly infected
24 one house but the day that the birds were to ship
25 out, I saw signs in the second house.

11:28AM

1 Q So did you then treat by those three items

2 you've just described both houses the same way?

3 A Yes, I did.

4 Q What happened to the litter or waste and

5 bedding material; did it stay in the house for the

11:28AM

6 next flock?

7 A Yes.

8 Q Do you know when that poultry waste and litter

9 was -- when was it removed in relation to the flock

10 that was infected?

11:29AM

11 MR. BOND: Object to the form.

12 A I believe it was approximately a year later.

13 Q All right, and was that done with a full

14 clean-out of both houses?

15 A I believe so, yes.

11:29AM

16 Q And do you know whether or not that clean-out

17 was land applied on your property?

18 A It was not.

19 Q You sold it?

20 A Yes.

11:29AM

21 Q When you sell it, do you tell anybody that it

22 had been previously infected?

23 A Not necessarily.

24 Q I believe based upon Exhibit 5 you now

25 indicate that you have a stacking shed, do I see

11:30AM

1 that, a litter storage facility as of August of
2 2006; is that a correct statement?

3 A Yes.

4 Q Where is that litter storage facility located
5 on your farm?

11:30AM

6 A It would be located just west of the poultry
7 houses in the fence row just immediately west.

8 Q Okay, and what size of facility is it?

9 A It's 40 feet wide by 60 feet long.

10 Q Is it one that's open to the air but has a
11 roof?

11:30AM

12 A Yes, it is.

13 Q So you have the side curtains are basically
14 open; is that right?

15 A It has two half sides and a full back and the
16 front is 100 percent open.

11:30AM

17 Q Is it a concrete floor?

18 A No.

19 Q Is it earthen floor?

20 A Yes.

11:31AM

21 Q Let's look now at 2413, if you would, sir,
22 and --

23 A Excuse me?

24 Q 2413, and if you'll tell me what that document
25 is.

11:31AM

1 A That is a schedule given to me by my service
2 rep stating the vaccination schedule, when they were
3 going to vaccinate my birds.

4 Q So this is something an integrator chose with
5 regard to timing; is that correct; they decided when 11:31AM
6 this was going to occur?

7 A Yes.

8 Q And this is their notice to you of when it's
9 going to happen; is that the purpose of this
10 document? 11:32AM

11 A That's correct.

12 Q And you're to follow whatever instructions are
13 listed on this form?

14 A Yes.

15 Q All right, and which form is this for; is this 11:32AM
16 for Peterson or Tyson?

17 A This is a Tyson form.

18 Q Let's skip over, if you would, to 2556, the
19 next page to look at.

20 A Okay. 11:32AM

21 Q Looking in the lower right-hand corner, I see
22 this is a Tyson form. It appears to be; is that a
23 correct statement?

24 A That is correct.

25 Q Tell the court what this form is. 11:32AM

1 A This form is a catching or sell-out form that
2 indicates to me when the birds would be caught by
3 Tyson's catchers.

4 Q Who fills out this form?

5 A The service rep. 11:33AM

6 Q And how do you receive this form?

7 A He leaves it along with a service report on
8 the clipboard in the poultry house.

9 Q All right. So he leaves his reports inside
10 the poultry barns? 11:33AM

11 A Yes.

12 Q So are these instructions then to you about
13 when to turn the feed off?

14 A Yes, they are.

15 Q And they're also instructions when to raise
16 the feed lines? 11:33AM

17 A Yes.

18 Q And they're instructions of when the catch
19 will start; is that correct?

20 A That is a tentative time the catch will start,
21 yes. 11:33AM

22 Q But you are to be prepared and ready to go at
23 these times; is that the purpose of this form?

24 A Yes.

25 Q And in saying you're prepared, are you 11:33AM

1 required then to conduct these seven items that are
2 listed under the feed withdrawal program?

3 A Could you ask your question again?

4 Q These seven items, these are items that you
5 are required to follow; is that correct?

11:34AM

6 A Well, I don't know if required is the correct
7 word but recommended.

8 Q Let's read the sentence below. It says
9 importance of proper feed withdrawal. Read to me
10 out loud that first sentence.

11:34AM

11 A It is very important that the above
12 instructions are followed exactly due to current
13 processing procedures.

14 Q Would that indicate to you that you are to
15 follow those?

11:34AM

16 A I understand the importance of proper feed
17 withdrawal.

18 Q And it says exactly these are to be followed,
19 does it not?

20 A Yes, I see that word.

11:34AM

21 Q Let's go backward, if you would, to Page No.
22 1935 in this document.

23 MR. HIXON: Richard, before you ask your
24 question, are you going to submit this as one
25 exhibit?

11:35AM

1 MR. GARREN: I'm going to ask him about
2 this exhibit.

3 MR. HIXON: I mean this stack of documents,
4 this is going to be one exhibit?

5 MR. GARREN: Yes.

11:35AM

6 MR. HIXON: Just for the Record, this is
7 marked confidential. There are a number of
8 documents in here that Peterson considers
9 confidential business information. Those documents
10 should be marked confidential in this exhibit and
11 we'll also distribute a confidentiality privilege
12 log identifying the documents Mr. Pigeon produced
13 and just for the Record these need to be handled in
14 accordance with the court's confidentiality order.

11:35AM

15 MR. GARREN: Okay.

11:36AM

16 Q Can you tell the court what this document is?

17 A It appears to be a feed delivery ticket from
18 Peterson Farms.

19 Q How did you come into possession of this
20 document?

11:36AM

21 A Every time they deliver feed there should be a
22 feed ticket left on the farm.

23 Q Where do they normally leave the feed ticket?

24 A Excuse me. This particular feed ticket more
25 than likely came with the settlement papers because

11:36AM

1 it's a credit ticket for feed picked up after the
2 flock was sold.

3 Q Okay.

4 A So this ticket would come with the settlement
5 papers.

11:36AM

6 Q And how are those delivered to you?

7 A The settlement papers?

8 Q Yes. With this credit ticket for feed, how do
9 you come into possession of it?

10 A There's been multiple methods of receiving
11 these documents over the years. There were times
12 that we could pick them up at Peterson's office.

11:36AM

13 There was a certain period of time that they decided
14 to mail those out. So this particular one --

15 Q I'm talking about generally, not just this
16 particular one. Generally when you -- let's do it
17 this way. You receive other feed delivery tickets
18 besides this credit that you just described;
19 correct?

11:37AM

20 A Yes.

11:37AM

21 Q How are those delivered to you?

22 A I have a newspaper box, if you will, mounted
23 to each or a feed bin at each house, and most of the
24 feed drivers will leave the tickets in that box.

25 Q Is that box locked?

11:38AM

1 A No, it is not.

2 Q Does it have a lid on it to enclose it?

3 A No, it does not. It has a rock inside of it.

4 Q Do you keep all feed delivery tickets?

5 A I do not keep all of them, no.

11:38AM

6 Q When you dispose of it, where do you dispose
7 of it?

8 A Some of them were probably burned. Some of
9 them probably just thrown in the trash, which would
10 end up in a landfill I would assume somewhere.

11:38AM

11 Q I want to talk to you about that. Do you have
12 a special container for trash for items related to
13 the poultry operation?

14 MR. BOND: Object to the form.

15 MR. WILLIAMS: Object to the form.

11:38AM

16 A Could you be more specific?

17 Q Let me ask it this way: The trash that you
18 create from just normal living in your residence,
19 what receptacle does that go into?

20 MR. BOND: Object to the form.

11:38AM

21 A Ultimately it ends up in a dumpster that I
22 lease from a refuse company.

23 Q And where is that dumpster located?

24 A It's located at the entrance to the farm.

25 Q All right, and when service reps come to your

11:39AM

1 farm in the past and they wear protective clothing,
2 do they also put that protective clothing in the
3 same dumpster?

4 A Sometimes they do.

5 Q Where do they put it if they don't put it in 11:39AM
6 that dumpster?

7 A I have a trash can at one of the feed bins
8 that has a lid on it.

9 Q What do you do with the trash that goes into
10 that trash can? 11:39AM

11 A When that trash can gets full, I typically bag
12 it up and throw it in the dumpster.

13 Q So ultimately all the trash that goes off your
14 property goes to that dumpster; that dumpster is
15 picked up by a service, a refuse service company; is 11:39AM
16 that correct?

17 A Yes.

18 Q And the location of that dumpster would be
19 before you get to the barns coming down the road
20 into your property; is that correct? 11:40AM

21 A Yes, in the extreme northeast corner of the
22 property.

23 Q Thank you. The fact that this has a
24 confidential stamp on it, that's not how you
25 received it, is it? 11:40AM

1 A No, it is not.

2 Q Let's skip back now to an operations manual or
3 handbook that's at Page 373. Are you there?

4 A Yes.

5 Q All right. This is a Peterson Farms broiler 11:41AM
6 management guide, is it not?

7 A Yes.

8 Q And when did you receive this in relation to
9 going to work with Peterson?

10 MR. WILLIAMS: Object to the form. 11:41AM

11 A I don't know exactly when I received it.

12 Q Would it have been near the time that you
13 started growing for them or some time later, if you
14 know?

15 A I don't know. 11:41AM

16 Q All right. Do you know whether you received
17 more than one from them, from Peterson?

18 A I'm thinking I did receive more than one.

19 Q And when you received one, were they
20 different; did you receive more than one, were they 11:41AM
21 different is my question?

22 MR. HIXON: Object to form.

23 A The layout may be different. The contents
24 were generally the same.

25 Q Looking at the Page 374 that follows the first 11:41AM

1 page, there's a letter there written by the
2 president, Dan Henderson; do you see that?

3 A Yes, I do.

4 Q And in the third full paragraph there's a
5 sentence, the second sentence -- read that to the
6 court where it starts off, if they are followed
7 carefully.

11:42AM

8 A If they are followed carefully, along with the
9 grower being present in the houses several times
10 during a day, the result should be a very strong
11 growing performance year, year in and year out.

11:42AM

12 Q Do you agree with that statement?

13 A Yes, I do.

14 Q Okay, and when it says if they are followed,
15 it talks about the guidelines in this broiler
16 management guide, does it not?

11:42AM

17 A I assume that, yes.

18 Q Look at Page 376 of this manual, if you would,
19 please. This is in the area that we were talking
20 earlier about preplacement checklist. First off,

11:43AM

21 let me start with this: When you received this
22 manual or handbook, did you read it?

23 A I'm sure I did.

24 Q Okay. Do you -- in your working for Peterson
25 did you ever refer back to it for assistance or

11:43AM

1 guidance?

2 MR. HIXON: Object to the form.

3 A Not necessarily.

4 Q All right. So do you have your own checklist

5 for chick placements or do you follow the one that's

11:43AM

6 set forth on Page 376 of this manual when you were

7 working for Peterson?

8 MR. HIXON: Object to the form.

9 A I don't have a per se checklist. I've always

10 been a good grower and I know what needs to be done

11:43AM

11 and I make sure it gets done.

12 Q And are the items that are listed on the

13 right-hand page where it says chick placement

14 checklist, are those items that are listed there

15 things you do?

11:44AM

16 A Absolutely.

17 Q All right.

18 A And then some.

19 Q Looking at Page 378, if you would, sir,

20 suggestions for management in the lower right-hand

11:44AM

21 corner of the column; do you see that heading?

22 A Yes.

23 Q Looking briefly at those, those are

24 essentially the same things that we saw itemized on

25 that service tech report, aren't they, the same

11:44AM

1 subject matters?

2 MR. BOND: Object to form. That was a
3 different company's form.

4 MR. HIXON: Object to the form.

5 Q The things that are talked about here are the 11:44AM
6 same things that we saw on the service tech report,
7 are they not?

8 A Similar, yes.

9 Q Let's move to Page 393 and I'll ask you some
10 questions about that item. When you started your 11:45AM
11 poultry growing operation at the facility that we've
12 described on Exhibit 6, were the barns already
13 existing there?

14 A Could you ask that again?

15 Q When you acquired the property that we see on 11:45AM
16 Exhibit 6 that shows two poultry barns located on
17 that property, were they there when you acquired it?

18 A No, they were not.

19 Q Were you responsible for seeing that they were
20 built? 11:46AM

21 A Yes.

22 Q All right, and were you given guidelines on
23 how they were to be constructed when you did so?

24 A Yes.

25 Q From whom did you receive those guidelines? 11:46AM

1 A I believe it was from the broiler manager at
2 Peterson.

3 Q Looking at Page 393 of this Exhibit No. 2,
4 were these requirements ones that you were
5 responsible for using?

11:46AM

6 MR. WILLIAMS: Object to the form.

7 Q Or similar ones to it, if you know?

8 A If I remember correctly, and this is just from
9 memory, I think this manual was written after I
10 built the houses, but there was a list similar to
11 that and when the houses were built, I went above
12 and beyond what they -- their house requirements
13 were.

11:46AM

14 Q So they had a minimum requirement list for
15 building a barn when you built your barns; is that a
16 fair statement?

11:47AM

17 A Yes.

18 Q Let's move to another document if you would,
19 sir, Page 492 of this Exhibit 2.

20 A What was that number?

11:47AM

21 Q 492. I believe you'll find --

22 A I could use a break.

23 Q We can break.

24 A Just a quick one.

25 Q Sure. No problem. We're almost to lunch. If

11:48AM

1 you want to just use this for a lunch break, we can.

2 It's a quarter until 12:00. We can break and be

3 back here in an hour or so. Is that all right?

4 A You decide.

5 Q No. I want to accommodate you, too. I know

11:48AM

6 you've been getting a bunch of buzzes on your phone.

7 MR. GARREN: Let's go off the Record.

8 (Following a lunch recess at 11:48

9 a.m., proceedings continued on the Record at 12:52

10 p.m.)

11:48AM

11 Q Mr. Pigeon, we're back after our noon break

12 and I'll remind you that you are still under oath.

13 A Yes.

14 Q We talked earlier about your 500-foot well and

15 you don't use it very much. Is there a reason you

12:52PM

16 don't use it very much?

17 A It doesn't produce enough water to do the

18 things I need to do with it.

19 Q Is that one reason why you had the 1,300-foot

20 well drilled?

12:52PM

21 A That was one reason, yes.

22 Q When you changed integrators from Peterson

23 Farms to Tyson, did anybody at Peterson Farms come

24 to you and ask you to give back all the documents

25 that you might have in your possession that they had

12:52PM

1 given you over the years?

2 A No.

3 Q Did they write you or contact you and ask you

4 to dispose of sensitive documents such as the one we

5 saw earlier that's marked confidential or settlement

12:53PM

6 sheets and the like?

7 MR. HIXON: Object to the form.

8 Q Let me reask it then. Were you specifically

9 requested to dispose of any documents whatsoever

10 that you may have had in your possession that were

12:53PM

11 provided to you from Peterson Farms?

12 A No.

13 Q Were you informed to keep any of those

14 documents that you may have in your possession

15 confidential?

12:53PM

16 A No.

17 Q Looking now, if you would, please, at the

18 document -- I believe it's Page 492. Have you seen

19 this document before?

20 A Yeah, I recognize the cover of it.

12:53PM

21 Q Can you tell me where you got this document?

22 A Not specifically. I recall having I believe

23 it was two duplicate copies of this book, one of

24 which I received while I was at Peterson and the

25 other I received at -- I'm not quoting the term but

12:54PM

1 it was like a water quality workshop that I attended
2 at -- I believe it was at the University of
3 Arkansas.

4 Q Would you please hold your place on this
5 document and go to Page 612 in this same exhibit and
6 look at the poultry water quality handbook that
7 exists there.

12:54PM

8 A Okay.

9 Q This document at Page 612 indicates it's been
10 printed with permission of the Water Quality
11 Consortium and it has Peterson Farms on it at the
12 bottom; do you see that?

12:55PM

13 A Yes.

14 Q Is that the one Peterson Farms gave you?

15 A I believe so, yes.

12:55PM

16 Q Do you know how and when you obtained it from
17 them?

18 A I would not know. I don't remember.

19 Q Did you read the document that's shown
20 starting at Page 612 in this exhibit?

12:55PM

21 A Not in its entirety, no.

22 Q All right. Let's then go back to the document
23 at Page 492. You said in your testimony that you
24 thought you got one at a water quality seminar.

25 Would the document at Page 492 be that document or a

12:55PM

1 different document?

2 A I believe it would be this document.

3 Q And when did you attend that seminar?

4 A I don't recall.

5 Q Was it while you were working for Peterson?

12:55PM

6 A Yes.

7 MR. WILLIAMS: Object to the form.

8 A Yes.

9 MR. GARREN: He's testified he was a

10 service rep for Peterson, so he was working for

12:56PM

11 Peterson.

12 Q Were you working for Peterson as a service rep

13 when you got this or were you simply a grower when

14 you got this form?

15 A I don't recall exactly, but I believe it was a

12:56PM

16 seminar for service reps from various companies that

17 attended the seminar.

18 Q Do you remember where it was?

19 A I believe it was at the Pauline Whitaker

20 Equine Center at the University of Arkansas. We

12:56PM

21 often had seminars at that location.

22 Q You testified that your first flock of birds

23 came in to you December of '95. When was it you

24 worked as a service rep? You said it was like '93

25 to 2003, did you not?

12:57PM

Page 113

1 A I believe that's correct, yes.

2 Q So it's possible you had this document at Page
3 492 before you were a grower but only acting as a
4 service rep?

5 A It is possible.

12:57PM

6 Q Okay. I would represent to you that in
7 looking at your document 492, I know that this
8 document was originally published actually in 1994
9 now that I think about it and that the one we see at
10 Page 612 with Peterson's name on it is a second
11 edition and it would not have been published until
12 September of '98. Does that help you in putting it
13 in a time frame when you might have come into
14 possession of either or both of these?

12:57PM

15 A It doesn't really help me --

12:58PM

16 Q That's fair.

17 A -- to be honest with you.

18 Q Back again to the document starting at 492,
19 did you read this document?

20 A Not in its entirety, no.

12:58PM

21 Q All right. When you attended that seminar,
22 would that have been a seminar paid by Peterson
23 Farms; they would have paid the cost for you to
24 attend?

25 MR. HIXON: Object to the form.

12:58PM

Page 114

1 A I don't have any idea --

2 Q All right.

3 A -- whatsoever.

4 Q I'm going to ask you then to look at Page 495

5 in the water quality handbook and it talks about in

12:58PM

6 the second paragraph major contributors who have

7 given time and knowledge to help organize and write

8 this handbook are the following and then down the

9 list it lists a person by the name of Ellis Brunton,

10 Tyson Foods, Inc., Springdale, Arkansas. Does

12:59PM

11 that -- are you familiar with that name or person?

12 A No, I'm not.

13 Q Looking at Page 497 of this document then,

14 please, sir, at the lower right-hand corner of that

15 document in the last paragraph there is a sentence

12:59PM

16 that starts midway into it, the expansion of the

17 industry, coupled with concentrating the growing

18 operations, has created a unique challenge, that of

19 proper disposal of immense quantities of waste. It

20 is important for producers and others to understand

01:00PM

21 how poultry waste can pollute the environment. Do

22 you agree with that statement?

23 A Yes, I believe I agree with that.

24 Q Let me ask you this then, sir: As a grower,

25 not as an employee of Peterson when you were a

01:00PM

1 service rep, what, if anything, did Peterson Farms
2 do to assist you in understanding how poultry waste
3 can pollute the environment?

4 MR. HIXON: Object to form.

5 A Some of the things that I remember -- well, 01:01PM
6 let me back up. You said as a grower.

7 Q Yes, sir.

8 A Not as --

9 Q As a grower, not as a service rep. I'm trying
10 to find out what Peterson would have done and 01:01PM
11 frankly, if you know, at the time you were a service
12 rep and a grower and something occurred, I don't
13 have a problem with you telling me that. The point
14 of my question is, tell me how you know Peterson
15 Farms did anything to assist its growers to 01:01PM
16 understand how poultry waste can pollute the
17 environment.

18 MR. HIXON: Object to form.

19 A I remember I believe it was in '98 I was
20 encouraged to contact the NRCS office in Delaware 01:02PM
21 County, which is in Jay, and inquire about getting a
22 nutrient management plan drawn up for my farm, and I
23 believe that was before any laws or rules were made
24 in regards to that.

25 Q Do you know the year that the Oklahoma Poultry 01:02PM

1 Feeding Registration Act was put in place?

2 A I don't recall exactly. I want to say 2000.

3 Q Okay. Any other examples of how Peterson

4 Farms helped its growers understand how poultry

5 waste can pollute the environment?

01:03PM

6 MR. HIXON: Object to form.

7 A I do vaguely remember taking copies of the

8 poultry water quality handbook that was mentioned

9 earlier on Page 612 I believe it was.

10 Q The second edition?

01:03PM

11 A The second edition, and hand delivering those

12 to growers that I serviced as a service rep for

13 Peterson.

14 Q Okay. Did you give any instructions upon

15 delivering the water quality handbook to a grower?

01:04PM

16 A Not that I recall.

17 Q So you basically are just acting as a

18 messenger or someone to deliver something; is that

19 correct?

20 A As far as I can remember, yes.

01:04PM

21 Q Do you know whether or not there was a letter

22 attached or instructions for the grower to consider

23 along with the handbook?

24 A None other than the letter that was included

25 in the document.

01:04PM

1 Q At Page 613?

2 A At Page 613, that I recall.

3 Q Okay. Do you recall a time frame in which
4 that might have occurred?

5 A I do not.

01:04PM

6 Q I notice Page 613 is not dated. That's why I
7 was asking. Do you recall delivering to the growers
8 the document which is the first edition that we have
9 a copy of at Page 492?

10 A I do not.

01:05PM

11 MR. BOND: Object to the form.

12 Q You mentioned attending seminars at the
13 University of Arkansas. Did you, sir, as a service
14 rep while working for Peterson Farms participate in
15 receiving updated literature or information from the
16 University of Arkansas regarding poultry growing
17 operations and in particular waste handling methods
18 or practices?

01:05PM

19 MR. WILLIAMS: Object to the form.

20 Q Let me ask you a different form. Did you
21 subscribe to any literature from the University of
22 Arkansas regarding waste handling management or best
23 practices?

01:06PM

24 A No, sir, I did not.

25 Q Did Peterson when you worked as a service rep

01:06PM

1 provide you regularly information regarding best
2 management practices for waste handling?

3 MR. HIXON: Object to form.

4 A I remember vaguely the topic coming up in
5 meetings that we had at Peterson Farms but I don't
6 remember any specific documents that updated.

01:06PM

7 Q At the meetings -- do you recall the time
8 frame in which those meetings occurred?

9 A I don't think I understand.

10 Q When were the meetings that you were referring
11 to in your last response?

01:07PM

12 A They were just weekly broiler service
13 meetings.

14 Q Who would normally conduct those meetings?

15 A The broiler manager.

01:07PM

16 Q All right, and do you remember who that was?

17 A There were multiple.

18 Q That's a fair statement. Do you remember what
19 it was that was spoken about regarding that subject,
20 best management practices?

01:07PM

21 A Not specifically I do not.

22 Q Was any materials disseminated in those
23 meetings to the service reps, written materials?

24 A Not that I recall.

25 MR. HIXON: Object to form.

01:07PM

1 A If they were, they would be included in my
2 stack of documents that I presented.

3 Q I'd ask you to look at Page 498, sir, if you
4 would, please, in the upper left-hand column. Do
5 you see where it says it is important for producers

01:08PM

6 to know, number one, what is in the waste that must
7 be disposed of; two, how much waste is expected to
8 be generated; three, what are the impacts of the
9 waste on water quality, the environment and human

10 health; four, how many -- I'm sorry, how these
11 materials can get into the water; and, five, how to
12 manage the waste in an environmentally safe manner;
13 do you see those statements, sir?

01:08PM

14 A Yes, sir.

15 Q Did I read it correctly, sir?

01:08PM

16 A Best I can tell, yes, sir.

17 Q Tell me, what has either Peterson or Tyson
18 done to educate or inform you of these five items?

19 MR. HIXON: Object to form.

20 MR. BOND: Same objection.

01:09PM

21 A I don't recall anything other than what's
22 stated or possibly stated in the contract.

23 Q Okay. So that the Record is clear, the term
24 used here is producer. Does that refer in your mind
25 to growers?

01:09PM

1 MR. HIXON: Object to form.

2 A Sure.

3 Q Okay. The first sentence of the second
4 paragraph goes on to say, and I'll quote, the most
5 overriding environmental issues facing growers today
6 is the impact that poultry waste can have on water
7 quality. Do you agree with that statement, sir?

01:10PM

8 MR. HIXON: Object to form.

9 A Yes, I believe I agree with that.

10 Q Were you as a service rep for Peterson Farms
11 informed in some way or another about what the
12 constituents of poultry waste is?

01:11PM

13 MR. HIXON: Object to form.

14 A Not that I recall.

15 Q Have you in your own reading or investigation
16 determined what might be the harmful constituents of
17 poultry waste?

01:11PM

18 MR. HIXON: Object to form.

19 MR. WILLIAMS: Object to form.

20 A I don't believe so.

01:11PM

21 Q Do you yourself have knowledge that certain
22 constituents of poultry waste can be harmful to the
23 environment?

24 A Could you ask that again?

25 Q Do you have of your own knowledge information

01:12PM

1 that confirms that certain constituents of poultry
2 waste can be harmful to the environment?

3 MR. HIXON: Object to form.

4 A I still don't think I understand.

5 Q Let me ask you a different question all 01:12PM
6 together. When you were working as a service rep
7 for Peterson Farms, did they ever request that you
8 in that capacity check on how poultry waste is
9 stored when not in the poultry barn?

10 MR. HIXON: Object to form. 01:12PM

11 A Yes, I believe I had to on occasion.

12 Q On occasion you would. Explain to me why it
13 was on occasion.

14 A Maybe that's not the correct word. If we
15 found a farm that litter was stacked outside 01:13PM
16 uncovered, then we were to address that issue.

17 Q And what would you do to address the issue?

18 A I would contact the grower and tell them that
19 they needed to get the litter moved or covered
20 within 24 hours. 01:13PM

21 Q And what did you do to follow up on your
22 instructions to the grower?

23 A Just returned the next day to see if they
24 complied.

25 Q And if they had not complied, what would you 01:13PM

1 have to do?

2 A Contact the grower again and try to find out
3 reasons that there was not at least an effort being
4 made to comply.

5 Q Were there occasions, sir, that you found 01:14PM
6 poultry waste stored outside and uncovered more than
7 once?

8 MR. HIXON: Object to form.

9 A Yes, it was probably more than once.

10 Q Were you requested by Peterson as a service 01:14PM
11 rep to inspect in Oklahoma -- let me ask you this:
12 Was your area that you worked in including the
13 Oklahoma area?

14 A The area that I was assigned changed at
15 various times and it did include growers on both 01:14PM
16 sides of the state line.

17 Q Okay, and did it include growers within the
18 Illinois River watershed?

19 A At some point, yes, it did.

20 Q Okay. Were you ever requested as a service 01:15PM
21 rep working for Peterson Farms to check on the
22 quantity of land application that was occurring on
23 the farms that you inspected for Peterson?

24 MR. HIXON: Object to form.

25 A I don't recall being asked to check or police 01:15PM

1 application rates of poultry litter.

2 Q You've been around the business just about
3 your whole life, haven't you?

4 A Yes.

5 Q Is it a fair statement to say that when 01:16PM
6 poultry waste is removed from the barn, it's
7 commonly and most always applied to the land as a
8 fertilizer?

9 MR. WILLIAMS: Object to the form.

10 A Most commonly, yes, that is the use of poultry 01:16PM
11 litter.

12 Q Do you know what would be the second most
13 common use of poultry litter after land application?

14 A I've heard of several uses over the years for
15 poultry litter but I couldn't tell you the rankings 01:16PM
16 of them.

17 Q Is one of them using it as a supplement or an
18 additive or in fact a food supply for beef cattle?

19 A Yes. Some cattle seem to like it.

20 Q When you were given the Peterson Farms version 01:17PM
21 of the poultry water quality handbook, was it part
22 of your duties to read it before you disseminated it
23 or after you disseminated it to growers?

24 MR. HIXON: Object to form.

25 A I don't recall that it was part of our duties, 01:17PM

1 no.

2 Q After you -- let me ask you this: Did you
3 deliver one to yourself? I assume that's why it's
4 in these documents.

5 A Obviously, yes.

01:17PM

6 Q Do you refer to this water quality handbook in
7 any way?

8 A To be honest with you, I almost forgot I had
9 it. So when I was digging through documents to
10 produce, I came across the two copies and here we
11 are.

01:18PM

12 Q Let's look at Page 427, if you would, sir. Do
13 you recall how this document came into your
14 possession?

15 A I don't remember exactly but I think that
16 there was some of these documents that was obtained
17 at the same seminar that the water quality handbook
18 that we had been referencing. I don't remember the
19 page number.

01:18PM

20 Q So would that have been in a seminar where you
21 were attending as a service rep for Peterson Farms?

01:19PM

22 A I believe so, yes.

23 Q Other than the ODAFF educational seminars,
24 have you as a grower attended seminars for best
25 management practices?

01:19PM

1 A Over the years, yes, I have.

2 Q And how would you know that there were
3 seminars for you to attend?

4 A Occasionally the companies will send mailers
5 out indicating that an entity, for lack of a better
6 word, whether it be the University of Arkansas or I
7 believe it's the Southeastern Poultry and Egg
8 Association sponsors some grower level seminars.

01:20PM

9 Q Educational seminars?

10 A Yes.

01:20PM

11 Q Okay. Were there any mandatory requirements
12 for the growers to attend those?

13 A Absolutely not.

14 Q All right. Were some of those seminars
15 dealing with water quality issues, if you know?

01:21PM

16 A I don't recall specifically but I'm sure some
17 were.

18 Q Okay. Did Peterson Farms itself put on
19 seminars, educational seminars for the benefit of
20 its growers to deal with water quality issues?

01:21PM

21 A Not that I recall.

22 Q Do you recall whether Tyson when you worked
23 with Tyson put on any seminars that were for the
24 growers dealing with, first, best management
25 practices or water quality?

01:21PM

1 MR. WILLIAMS: Object to the form.

2 MR. BOND: Object to the form.

3 A Not that I recall.

4 Q On either of those subjects, best management
5 practices or water quality?

01:22PM

6 A Not that I recall.

7 Q Did you read the document that's shown at Page
8 427 in Exhibit 2?

9 A Again, I think that was included in the water
10 quality handbook, which I had forgotten that I even
11 had in my possession until just recently and I don't
12 recall whether I read that specific document or not.
13 I've read so many over the years I don't remember
14 this specific one.

01:22PM

15 Q Turn to Page 433, if you would. Can you tell
16 me how this document came to be in your possession?

01:22PM

17 A Again, I'm assuming that this is part of the
18 documents that I obtained at the seminar where I
19 received the handbook.

20 Q You just don't remember for sure?

01:23PM

21 A I don't remember for sure, no.

22 Q Do you remember whether or not either Peterson
23 or Tyson delivered this document to you for your
24 use?

25 MR. BOND: Object to the form.

01:23PM

1 A If I remember correctly, at the seminar where
2 I received the book that we've been talking about,
3 they had multiple flyers and handouts lying on a
4 table at the back of the room and I browsed down the
5 table and picked up one of each of those documents.

01:23PM

6 Q So this would have been again at the seminar
7 where the water quality handbook was given to you?

8 A I believe that to be correct.

9 Q Okay. Let's look at another one on Page 459,
10 if you would, sir. Do you have a recollection of
11 where and how this came into your possession?

01:24PM

12 A Again, I would assume that it was at the same
13 seminar that we've been discussing.

14 Q You don't have any independent recollection
15 specifically, though, at this point?

01:24PM

16 A No, I do not.

17 Q Do you recall whether you read this document
18 at any time?

19 A No, I do not.

20 Q I may have asked you earlier whether or not by
21 way of subscription you receive any documentation
22 from the University of Arkansas. Do you subscribe
23 to any other type of association or organization
24 that would publish information useful in your
25 practice as a poultry grower?

01:24PM

01:25PM

1 A Could you ask that again?

2 Q Do you receive by way of some subscription,
3 whether paid for or free, information from some
4 association or organization that would send you
5 literature useful in your profession as a poultry
6 grower?

01:25PM

7 A Yes. Occasionally I'll receive or
8 occasionally I subscribe to -- it's called Poultry
9 Housing Tips from the University of Georgia and
10 occasionally I'll receive a similar newsletter from
11 Auburn University and I forget the title of those
12 documents.

01:26PM

13 Q I did see some information I believe in your
14 documents from one or both of these -- published by
15 one or both of these universities. Is that how you
16 came into possession of those documents, if you
17 know?

01:26PM

18 A I don't recall specifically how I received all
19 of those documents. I have subscribed to both of
20 them over the years and for many years some
21 duplicates may have been given to me from either
22 Peterson or Tyson.

01:26PM

23 Q Was the purpose of your subscribing because
24 you were a grower or because you were working as a
25 service rep for Peterson at the time?

01:26PM

1 MR. HIXON: Object to the form.

2 A Both.

3 Q Did Peterson require you to subscribe to any
4 organization or association to receive literature
5 about growing practices?

01:27PM

6 A No.

7 Q Are you currently a member of any kind of
8 association or organization that's associated with
9 poultry growing?

10 A I'm a member of Poultry Partners.

01:27PM

11 Q All right. We'll talk about that in a little
12 bit. Any others?

13 A Not that I'm aware of.

14 Q All right.

15 A Or can think of.

01:27PM

16 Q In your deposition of May of '06 you describe
17 your methods of cleaning out your house. Are those
18 methods today the same as they were as described in
19 the May of '06 deposition?

20 A I believe so, yes.

01:28PM

21 Q You haven't done anything different in the
22 last year or so in the method in how and when you
23 clean out your poultry barns, have you?

24 A Not that I'm aware of.

25 Q And the same about the cake-out. Have you

01:28PM

1 done anything in the method of when and how you cake
2 out your poultry barn that was described in your May
3 '06 deposition?

4 A I probably do fewer cake-outs than I did at
5 that time.

01:28PM

6 Q Okay, and why would that be?

7 A Because I'm trying to conserve bedding and I'm
8 trying to do my part, if you will, at not spreading
9 any more litter than I need to spread.

10 Q Is there a point in time that the waste and
11 bedding material needs to be cleaned out for the
12 health of the birds? You can't keep it in there
13 indefinitely; is that a fair statement?

01:28PM

14 MR. BOND: Object to the form.

15 A No, I don't believe that's a fair statement.

01:29PM

16 I believe it could be kept in the houses
17 indefinitely. I think there would be some
18 limitations because the depth would keep getting
19 deeper and eventually you couldn't open the door but
20 aside from that, I think it could be kept in the
21 houses for an extended period of time.

01:29PM

22 Q Does that assume that you would also not cake
23 out or does that assume there would be cake-outs?

24 A I don't think I understand.

25 Q Well, if you said it could be kept there

01:30PM

1 indefinitely, one concern you had would be the depth
2 it could reach. At some point doesn't it become a
3 problem for the health of the bird?

4 A It does make it more difficult to maintain
5 good performance on the birds, but I think with the
6 proper management techniques that good performance
7 could still be attained.

01:30PM

8 Q Does Tyson encourage you at this time to seek
9 an indefinite period of time to avoid removal of the
10 poultry litter or waste?

01:30PM

11 MR. BOND: Object to the form.

12 MR. WILLIAMS: Object to the form.

13 A I don't think I understand.

14 Q Have you been encouraged or instructed to
15 extend the time between clean-outs or cake-outs by
16 Tyson?

01:31PM

17 MR. BOND: Object to the form.

18 A No. I think most of the poultry companies
19 would like to see them cleaned out at least once a
20 year to improve or help improve bird performance.

01:31PM

21 Q Okay.

22 A But it is not required.

23 Q You spoke earlier about and I'm going to use
24 the term shut in. You shut in the house when you
25 talked about putting the waste in winrows and baking

01:31PM

1 it for a period of time; do you remember that
2 discussion and testimony?

3 A Yes.

4 Q Is that the only time you've shut in your
5 house? Is that a fair statement to use the term
6 shut in? I don't want to say something you don't
7 agree with the description.

01:31PM

8 A That's fine. There's multiple terms you could
9 use to describe the same.

10 Q How do you describe it; what term do you
11 describe it?

01:32PM

12 A Just closing up the houses.

13 Q Okay.

14 A I guess it's basically the same term.

15 Q All right. Other than the time you described
16 dealing with the LT disease, is there any other time
17 that you've done that same technique?

01:32PM

18 A Would you be more specific?

19 Q Well, have you shut in your house other than
20 the time that you dealt with LT disease?

01:32PM

21 A Yes.

22 Q And when was that, before or after the LT
23 disease?

24 A I usually do that every flock.

25 Q You shut in your house every flock?

01:32PM

1 A Yes, I do.

2 Q And why do you do that?

3 A To aid in drying the litter and removing
4 moisture, to improve litter conditions for the
5 following flock.

01:33PM

6 Q Do you do exactly as you did before or is the
7 shut-in a shorter period of time? Let me ask it
8 this way so we're not confusing the two different
9 shut-in periods. When you shut in after every
10 flock, not as a result of LT, what is the time
11 period you shut in?

01:33PM

12 A The time between flocks will determine that
13 and the amount of time, the amount of moisture in
14 the litter, planned vacations. There's a multitude
15 of things that determine the length of time that
16 this shut-in occurs.

01:33PM

17 Q Do you need to be there when that is
18 occurring?

19 A Not necessarily.

20 Q Shortest to longest period, what's your
21 shut-in requirements that you use after every flock?

01:34PM

22 A I don't know that I can answer that.

23 Q Well, do you recall last summer when the State
24 of Oklahoma was coming to sample waste in your
25 barns?

01:34PM

1 A Yes.

2 Q You knew they were coming in advance, did you
3 not?

4 A Yes.

5 Q What was the purpose for doing the shut-in in 01:34PM
6 advance of that sampling?

7 A As I recall, we were fixing to leave town on
8 vacation for a week and I was trying to cram about a
9 week and a half worth's of work in about three days,
10 so I was trying to get as much drying done in the 01:34PM
11 houses as possible.

12 Q How long is it safe after you've had a house
13 shut in before somebody could physically go into
14 those barns?

15 MR. BOND: Object to the form. 01:35PM

16 A I don't know that I understand what you mean
17 safe.

18 Q Do you have a respirator you put on to go into
19 the barns after a shut-in?

20 A I usually wear a particle or dust particle 01:35PM
21 mask or dust mask.

22 Q Is it common for you to go in immediately
23 after you've had a barn shut in for a period of
24 time?

25 A Very briefly. 01:35PM

1 Q The ammonia is pretty strong, isn't it?

2 A Yes, it is.

3 Q Burns your eyes pretty bad, doesn't it?

4 A Yes.

5 Q Without a mask, it would burn your nose and

01:35PM

6 nostrils, would it not?

7 A Yes.

8 Q And you don't have a respirator; is that

9 correct?

10 A Not other than a dust particle respirator.

01:35PM

11 Q Did you add any chemical or additives of any

12 sort to the poultry waste to your barn before the

13 State came in to sample it last summer?

14 MR. BOND: Object to the form.

15 A Absolutely not.

01:36PM

16 Q I believe in looking at your records, and

17 correct me if I'm wrong, February 14th is the last

18 time you reported in 2006 to have done a land

19 application. Does that sound right?

20 A Yes, it does.

01:36PM

21 Q Have you applied anything since that date,

22 February 14th, 2006, on your land?

23 A I have not land applied any litter since

24 February, whatever the date is, of '06.

25 Q All right. Do you have planned any future

01:37PM

1 land applications at this time?

2 A I don't have any plans at this time but I
3 imagine at some point in the future if the law
4 allows, I may land apply some litter.

5 Q What is the most current date of soil tests 01:37PM
6 that you have at this point?

7 A I believe I had my -- I tested my soil --

8 Q Does April 24th, 2007 sound correct to you?

9 A Yes, it does. Thank you.

10 Q I'm not trying to trick you. I was trying to 01:37PM
11 get a date.

12 A And I was trying to remember the date. Thank
13 you.

14 Q But that sounds to be correct; right?

15 A Yes, sir. 01:38PM

16 Q You haven't tested it since then?

17 A No, sir.

18 Q In your documents we have at Page 338 your
19 most recent waste management plan and it's dated in
20 November of 2006. Tell the court what you 01:38PM
21 understand to be the purpose of the waste management
22 plan.

23 A I would assume that the purpose of the waste
24 management plan is to aid the grower in making
25 decisions as to when and where and at what rates 01:39PM

1 poultry litter can and should be applied to their
2 land, and I say grower. That should be farmer.

3 Q It could be someone other than a poultry
4 grower that would be land applying?

5 A Sure. 01:39PM

6 Q Is it your testimony that you have followed
7 this plan and the 1998 plan that you previously had?

8 A Excuse me?

9 Q You had a previous plan in 1998, did you not,
10 for a waste management plan? 01:39PM

11 A I believe that's correct, yes.

12 Q I know it's in your records and I'm sure it's
13 in this stack. I don't have it here in front of me.

14 A Yes.

15 Q Actually it shows at page -- it's in a new 01:39PM
16 exhibit. Do you see a divider in your book there
17 that shows I think Exhibit No. 3?

18 A Yes.

19 Q At Page 89085 there is a waste management
20 plan. I just want you to identify your plan. Did 01:40PM
21 you find the right page, 89085 --

22 A Yes.

23 Q -- with a prefix of OKDA?

24 A Yes.

25 Q And that's a plan dated October '98, isn't it? 01:40PM

1 A Yes.

2 Q And that's the plan that was applying to your
3 land or applied to your land from that time period
4 until you received your new one I guess; is that a
5 fair statement?

01:40PM

6 A Yes.

7 Q So my question is, is it your opinion that you
8 followed these plans?

9 A I tried to follow the plans the best I can.

10 Q Do you read these documents in their entirety?

01:41PM

11 A I have at some point.

12 Q Do you refer back to them at any time or
13 simply read them once and try to remember it?

14 A Occasionally I'll refer back to them.

15 Q Let me ask you this question: If you're
16 following this plan, can you explain to me how soil
17 test phosphorus on your land would exceed 400 pounds
18 per acre as shown on some of your soil tests?

01:41PM

19 MR. BOND: Object to the form.

20 MR. WILLIAMS: Object to the form.

01:41PM

21 A I think the method that the soil tests are
22 taken have not been as accurate as they should be.

23 Q And can you give me a further reason as to why
24 the phosphorus level would be higher than 400 pounds
25 per acre?

01:42PM

1 MR. BOND: Object to the form.

2 MR. HIXON: Object to the form.

3 Q If you know.

4 A A bad sample.

5 Q And how would one obtain a bad sample to 01:42PM
6 elevate the soil test phosphorus above 400 pounds
7 per acre?

8 A Acquiring more of the surface soil in the
9 sample than you do of the six-inch portion of the
10 sample. 01:42PM

11 Q How would you describe the soil on your
12 property? Maybe I should ask it this way: How deep
13 is the soil before you hit rock on your property?

14 MR. BOND: Object to the form.

15 A Depends on where you are talking. 01:42PM

16 Q And I knew that would be your answer. So
17 we're going to find out what's the shortest or
18 smallest depth compared to the deepest area of soil
19 that we might refer to where you might find that on
20 your land? 01:43PM

21 A Honestly I don't know.

22 Q When you take a soil sample, how many cores do
23 you pull for a field?

24 A I try to pull maybe two samples or two cores
25 per acre. 01:43PM

1 Q And the tool that you use, is it the same tool
2 that you described in your deposition May of '06,
3 being a three-inch auger with a drill?

4 A It's not a three-inch auger. I believe it was
5 a three-quarter inch.

01:44PM

6 Q I'm sorry, three-quarters. I misspoke if I
7 said three inch. I didn't mean to say three. Let's
8 start over. Do you still use the three-quarter inch
9 auger you described in your deposition in May of
10 '06?

01:44PM

11 A No, I have not.

12 Q What do you use now?

13 A I've started using most recently an inch and a
14 quarter piece of pipe and I drive it in the ground
15 with a post driver.

01:44PM

16 Q And then -- let me ask you this: Why are you
17 using that tool now?

18 A Because I felt that the three-quarter inch
19 auger that I was using, as it was entering the soil,
20 it continually stripped more soil from the upper
21 level of that profile causing a higher phosphorus
22 reading.

01:44PM

23 Q What do you mean it stripped from it? Explain
24 what you mean.

25 A As the auger turns, it's continually rubbing

01:45PM

1 the sides of the hole bored in the ground. So the
2 auger continually strips small amounts of soil from
3 the upper levels for a longer period of time than it
4 does at the lower depths.

5 Q And when did you start using the new tool? 01:45PM

6 A Probably -- what was the date earlier?

7 Q April of '07.

8 A April of '07.

9 Q So that would be the first time you used that
10 tool is the April of '07 soil tests? 01:45PM

11 A I believe that would be the --

12 Q I'm sorry. Go ahead.

13 A I believe that would be the maiden voyage, if
14 you will.

15 Q And where did you get the idea of using that 01:45PM
16 tool as opposed to the one you had been using?

17 A The original idea I got from visiting with
18 John Littlefield.

19 Q When was that?

20 A I don't recall. 01:46PM

21 Q Was it just prior to the April soil test that
22 you pulled or sometime before that?

23 A It was probably a year before that.

24 Q Okay.

25 A I'm kind of slow with my projects. 01:46PM

1 Q Did you use it in February of '06, your new
2 tool, to obtain a soil test?

3 A No.

4 Q How far do you pound the one and a half or one
5 and a quarter inch pipe into the ground?

01:47PM

6 A Probably six inches.

7 Q When you say probably, do you measure it?

8 A I don't measure every sample. I kind of have
9 a mark scored on the pipe and I drive to the mark
10 and then extract the pipe.

01:47PM

11 Q All right. Do you measure the depth of the
12 core when you pull it out of the pipe?

13 A I do not.

14 Q There's a statement at Page 341 in your most
15 recent waste management plan under Section C that
16 says no litter has been applied on this property in
17 the last two years. That would then include all of
18 2006 and most, if not all, of 2005. Do you know
19 where that statement came from?

01:47PM

20 A No, I do not.

01:48PM

21 Q Is that something that you would have told the
22 person preparing this waste management plan?

23 A I don't recall.

24 Q Did the person that prepared this waste
25 management plan look at all of your land application

01:48PM

1 records, including soil tests?

2 A I don't believe he looked at all of my
3 records.

4 Q Do you know which records he looked at?

5 A I think I gave him current copies of any soil 01:48PM
6 tests and other tests that had been taken at that
7 time.

8 Q Okay. This document at the same page under
9 heading D, dead bird disposal, states primary
10 disposal of birds from normal death loss is an 01:49PM
11 incinerator. Is that a true statement?

12 A At this time, no, it's not.

13 Q At the time in November of '06 was it a true
14 statement?

15 A I don't believe so. 01:49PM

16 Q What do you use for normal death loss
17 disposal?

18 A We send those to a landfill.

19 Q When you pull the dead birds out of the house,
20 you do that on a regular -- at least daily basis, do 01:49PM
21 you not?

22 A Absolutely.

23 Q Tell me the procedure -- after you've picked
24 it up and taken it to the door of the barn, where
25 does it go? 01:49PM

1 A I take the birds out of the house and place
2 them in some heavy plastic barrels and I cover the
3 barrels.

4 Q With what?

5 A With plastic.

01:50PM

6 Q So the barrel itself is a hard plastic?

7 A Yes.

8 Q The plastic that goes on top is like a plastic
9 tarp?

10 A Yeah. It's like a big shower cap, if you
11 will. It's just a piece of plastic that has a
12 bungee cord sewed in it that's easily snapped over
13 the top to seal the top.

01:50PM

14 Q Then what do you do with the barrel with the
15 carcasses in it?

01:50PM

16 A I transport the barrel to a dumpster at Green
17 Country Farms.

18 Q Okay, and that's where you work?

19 A Yes.

20 Q And is that -- so that dumpster then gets
21 picked up and taken to the landfill that Mr. Butler
22 testified to in his deposition?

01:50PM

23 A Yes.

24 Q Do you pay Mr. Butler at Green Country Farms
25 for that service?

01:51PM

1 A No, I do not.

2 Q What do you estimate the mortality to be on
3 average for birds that you grow?

4 A On what basis?

5 Q Your settlement sheets reflect mortality or 01:51PM
6 livability percentages, do they not?

7 A Yes.

8 Q Based on that number, do you know on average
9 what your livability or mortality percentage is?

10 I'm excluding catastrophic death here. I'm talking 01:51PM
11 about normal mortality.

12 A I guess if you're asking on a per flock basis,
13 that number on the settlement sheet would be
14 accurate.

15 Q I understand, but normally on average do you 01:52PM
16 know what that number is? Let me ask you, it
17 doesn't fluctuate very much, does it?

18 A Not particularly.

19 Q Does a range of 4 to 6 percent mortality for a
20 flock seem reasonable? 01:52PM

21 A Okay. Now I understand what you're asking. I
22 think I do. On average I would say 3 to 6 percent
23 would be a reasonable range.

24 Q All right, and that would be a percentage of
25 the total birds delivered; correct? 01:52PM

1 A Correct.

2 Q And so if you have 40 to 42,000 birds
3 delivered, we're talking for math, at 4 percent,
4 about 16,000 birds that would die? 1,600.

5 MR. WILLIAMS: I'm sure I object.

01:53PM

6 Q I'm sorry, it's the math.

7 (Whereupon, a discussion was held off
8 the Record.)

9 Q So you got 1,600 birds. When do birds most
10 often die, young or old, or is there a pretty equal
11 time period frame of when they die?

01:53PM

12 MR. HIXON: Object to form.

13 A I've never seen their schedule but --

14 MR. BOND: They all die.

15 Q While they're in your grow-out care, while
16 they're there, do you lose birds most when they're
17 young, when they're older or does it really matter;
18 is it pretty equal?

01:53PM

19 A It varies from flock to flock. There's some
20 flocks that a higher percentage of the mortality is
21 the first week and there are flocks that a higher
22 percentage of the mortality is during the last week.
23 So it's hard to answer that question.

01:53PM

24 Q The mortality cards that are kept, who
25 prepares those?

01:54PM

Page 147

1 A I do.

2 Q So every day you make a count of the birds
3 that are removed and keep it on the mortality card;
4 is that correct?

5 A Yes.

01:54PM

6 Q What happens to that card when you are
7 through?

8 A The cards are supposed to be taken by one of
9 the drivers of the trucks that pick the birds up. I
10 assume he takes them to the processing plant to
11 their offices and they're returned to me in the
12 settlement papers or copies are returned to me.

01:54PM

13 Q I see. So you keep the card, the original
14 card through the entire period of the grow-out and
15 give them all to the catcher that drives the truck?

01:54PM

16 A Yes.

17 Q The soil test that is attached to your waste
18 management plan in November of '06, who took the
19 samples for that soil test?

20 A I did.

01:55PM

21 Q And that would have been using what you
22 described as your older tool, the auger with the
23 three-quarter inch bit; is that right?

24 A That's correct.

25 Q Were you given copies of the soil test

01:55PM

1 analysis that was performed by the State of Oklahoma
2 in the summer of 2006?

3 A Yes, I believe I was.

4 Q They aren't in the documents you produced to
5 me. Is there a reason for that?

01:56PM

6 MR. WILLIAMS: Counsel, it was probably my
7 fault. I didn't think that you were asking him to
8 produce back to you what you produced to him.

9 MR. GARREN: If that's the response, that's
10 what I need to know.

01:56PM

11 Q Are there any other documents that you thought
12 should not have been produced?

13 A I assumed those documents -- I assumed those
14 documents would have been in documents produced for
15 the prior deposition and I was searching for new
16 documents.

01:56PM

17 Q Okay.

18 A Unless I inadvertently looked at dates wrong.

19 Q So we can kind of clear the Record up, the
20 documents that you produced under this subpoena
21 started at Page No. 233 and then went up from there.

01:56PM

22 So is your testimony that documents that are Bates
23 numbered 1 through 232 were previously produced to
24 the State as a result of the May 9, 2006 deposition
25 proceeding?

01:57PM

1 A I don't know if I could answer that.

2 Q That's why I was trying to figure out where
3 the first 232 pages are that weren't produced under
4 my subpoena.

5 MR. WILLIAMS: I don't think he knows the
6 answer to that question. I suspect that there may
7 have been some duplication because he produced for
8 the ODAFF proceeding and then I think he basically
9 produced all the same documents again for this
10 proceeding, so --

01:57PM

01:57PM

11 MR. GARREN: Well, if he did, the Bates
12 numbering doesn't reflect a duplication and they
13 purposely start at 233. At some point, Counsel, why
14 don't you and I discuss this after the deposition
15 and see where we are and where those documents are.

01:58PM

16 MR. WILLIAMS: That's fine. Every effort
17 was made this time to produce everything in his
18 records I believe.

19 A I don't know that I reproduced documents that
20 had been produced earlier.

01:58PM

21 Q It doesn't appear to me that you did.

22 A Because we were trying to save paperwork and
23 time because of the short time frame the documents
24 needed to be produced.

25 MR. WILLIAMS: If that's the case, Rick, it

01:58PM

Page 150

1 would just be the ODAFF records I assume that we
2 produced the last time. I can reproduce those for
3 you.

4 MR. GARREN: We'll talk about it and see if
5 we need to.

01:58PM

6 Q I'll ask you to look at the Exhibit 3, which
7 is in the back of your book behind that binder
8 marker. Turn, if you would, sir, to Page 098 and 99
9 and you'll be looking at a private poultry waste
10 applicator annual report cover sheet and application
11 record.

01:59PM

12 A What was the numbers?

13 Q 89098. They all start with 89. I'm just
14 referring to Page 98 if that helps. Do you see that
15 record there as a form that you filled out for the
16 period July 2003 to June of 2004 and it's dated
17 November of '04?

01:59PM

18 A Yes.

19 Q And that's your signature on that page;
20 correct?

02:00PM

21 A Yes, it is.

22 Q Look then at the second page of that report,
23 89099. Is that a form you filled out?

24 A Yes, I believe it is.

25 Q All right. I'm going to refer you to the two

02:00PM

1 dates. There's a date applied; do you see that
2 first column?

3 A Yes.

4 Q And that's the date of the application that's
5 being reported, is it not?

02:00PM

6 A Yes.

7 Q There's another date that's in the fourth
8 column that's called sample date and lab used; do
9 you see that column?

10 A Yes.

02:00PM

11 Q Can you tell me, sir, why you used a sample
12 date that was after the application date? For the
13 first application dated July 4th, 2003, you should
14 have had a soil test in your possession in advance
15 of that application date; would you agree?

02:01PM

16 MR. BOND: Object to the form.

17 A Yes. The only explanation I would have would
18 be I just inadvertently -- when filling the form
19 out, I grabbed my most recent analysis and used that
20 on filling the entire form out.

02:01PM

21 Q And what did you use to fill out the July 4,
22 '03 land application record?

23 A Excuse me?

24 Q If you used a most recent soil test that you
25 looked at to fill this out, what record did you look

02:01PM

1 at to prepare the application data that goes across
2 the row that's dated July 4th, 2003?

3 A I have a spreadsheet that's kind of a
4 worksheet that I filled out as I spread litter.

5 Q That's the same spreadsheet or worksheet that 02:02PM
6 you testified to in May of '06; is that correct?

7 A Yes, it is.

8 Q I don't know if I have the actual one that we
9 might look back. Look at Page 89044.

10 A Okay. 02:02PM

11 Q Did you hold your page on the prior one?

12 A Yes.

13 Q You've got a July 4th, 2003 application that
14 you report where the tons applied were three tons on
15 Field 1. 02:03PM

16 MR. WILLIAMS: We must be looking at
17 different things, Rick.

18 Q I'm sorry. I'm at Page 89099. The item that
19 we were talking about, that application, the very
20 first line reports three tons being applied on 02:03PM
21 fourteen acres on Field 1 on July 4th, '03; is that
22 what I read?

23 A Say that again.

24 Q The waste of tons applied were three tons on
25 Field 1, which is represented to be fourteen acres? 02:03PM

1 A Yes.

2 Q If you look at Page 89044 where your
3 spreadsheet exists for the period of 2002 to 2003,
4 should I not be able to find that application for
5 Field 1 on that record if it existed?

02:04PM

6 A It would be on the 2003-2004 spreadsheet.

7 Q All right. Let's see if we can find that one
8 if it exists. That may be why I couldn't find it.

9 A It confuses me as well because they're not
10 calendar years; they're fiscal years.

02:04PM

11 Q I understand. Unless I've really overlooked
12 something, I can't find your spreadsheet for the
13 period we just tried to describe, '03 to '04. Do
14 you know whether or not you produced it?

15 A I'm sure I did.

02:04PM

16 MR. GARREN: I'm not going to waste a bunch
17 of time on this.

18 Q So we can testify, if I look at Page 89044,
19 this is the spreadsheet you are referring to that
20 you keep -- Page 89044, this is an example of the
21 spreadsheet you keep?

02:05PM

22 A Yes.

23 Q And your testimony I believe in May of '06 was
24 that you draw this up contemporaneously when you
25 make an application; correct?

02:05PM

1 A Yes.

2 Q Is that still your method today?

3 A If I were land applying litter, yes, it would
4 be.

5 Q All right. Does the computer -- do these 02:05PM
6 records still exist in electronic form within the
7 computer?

8 A No, they do not.

9 Q When were they discarded or destroyed?

10 A This spreadsheet is just to aid me in 02:06PM
11 calculations and record keeping. Once a hard copy
12 is printed out for each year, the data, if you will,
13 is erased and a new year is started for the next
14 year.

15 Q So you only have a one-year period at any time 02:06PM
16 within the computer?

17 A Yes.

18 MR. WILLIAMS: Before we leave this topic,
19 Counsel, do you want us to confirm that we did
20 produce or produce again to you the one spreadsheet 02:06PM
21 that you were looking for?

22 MR. GARREN: Yes.

23 MR. WILLIAMS: And that's the spreadsheet
24 for what calendar year?

25 MR. GARREN: '03-'04. 02:06PM

1 MR. WILLIAMS: Would this be an okay place
2 to take a break?

3 MR. GARREN: Yeah.

4 (Following a short recess at 2:07 p.m.,
5 proceedings continued on the Record at 2:16 p.m.)

02:07PM

6 Q Mr. Pigeon, look at Exhibit 2 and let's go to
7 Page 248. There's a broiler production manual from
8 Tyson. That would be the second page in of this
9 book, all the way over to the very front. This is a
10 document you produced to me pursuant to the
11 subpoena. Do you know when you received this
12 broiler production manual from Tyson?

02:16PM

13 A No, I do not.

14 Q At Page 250 of this document, the very last
15 sentence says, and I'll read, this broiler
16 production manual supersedes and replaces all prior
17 broiler production manuals that may have been issued
18 to the producer. I don't find a date on this one.

02:17PM

19 Do you have any clue whether or not you had one
20 before this one?

02:17PM

21 A If I did, it would have been in my records and
22 I would have produced it. I don't recall having any
23 prior to this one.

24 Q Okay. Would you please read the second
25 paragraph, first sentence into the Record, please?

02:17PM

1 A Because the functions of independent poultry
2 producers are an integral part of Tyson operations,
3 your contract with Tyson requires you to fulfill
4 duties critical to creating a climate capable of
5 satisfying customer needs, including animal well
6 being, food safety, environmental and economic
7 demands.

02:18PM

8 Q All right. That includes environmental
9 demands, doesn't it?

10 A Yes.

02:18PM

11 Q And tell me what, if anything, Tyson has done
12 for you as a grower to make you aware of those
13 environmental demands.

14 MR. BOND: Object to the form.

15 A Honestly I don't recall any.

02:18PM

16 Q Let's go to document number Pigeon Page 766,
17 please, and I noticed in mine it may be out of order
18 behind Page 772 just to aid you in finding it.

19 A What page again?

20 Q 766, this letter was produced by you. Kirk
21 Houchens, do you know who he is?

02:19PM

22 A Yes, I do.

23 Q And did you have a working relationship with
24 him when you were both an employee and a grower for
25 Peterson Farms?

02:19PM

1 A As an employee, yes.

2 Q Okay. You'll notice that in the PS of that
3 letter, the postscript, the very first sentence
4 says, the spring clean-out season is coming soon.

5 Do you see that?

02:20PM

6 A Yes.

7 Q In your opinion was Peterson fully aware of
8 what happens to poultry waste when it goes out of
9 the barn, that it was traditionally land applied?

10 MR. HIXON: Object to the form.

02:20PM

11 A I don't know that I understand what you're
12 asking.

13 Q As an employee of Peterson Farms, was there
14 any doubt in your mind what happened to poultry
15 waste when it was removed from the barn?

02:20PM

16 MR. HIXON: Object to form.

17 A Typically it was spread as fertilizer.

18 Q As far as you know, as long as you can
19 remember, do you remember it being done any other
20 way in your experience as growing up on a poultry
21 farm and having a farm of your own?

02:20PM

22 A I don't know if I understand what you're
23 asking.

24 Q Do you recall any other primary use
25 traditionally used for poultry waste once it's

02:21PM

1 removed from the barn other than land application?

2 A No.

3 Q And when this postscript refers to the spring
4 clean-out season, what does that refer to?

5 A Historically poultry growers would clean out 02:21PM
6 in the spring of the year for multiple reasons, one
7 of which is being it's the best time to fertilize
8 the grass, make the grass grow.

9 Q And to do that, you take it out of the barn
10 and land apply it, don't you, that meaning poultry 02:21PM
11 waste?

12 MR. BOND: Object to the form.

13 MR. HIXON: Object to form.

14 Q I'll restate it. In order to fertilize, when
15 you take the poultry waste out of the barn, it's 02:22PM
16 land applied; is that a correct statement?

17 A In order to fertilize, yes, litter would be
18 applied to the land.

19 Q When you were a Peterson service rep, how many
20 farms would you visit that was in your control? 02:22PM

21 MR. WILLIAMS: Object to the form.

22 Q In your area of responsibility?

23 A That varied from approximately 35 to at one
24 point it was as many as 52 or 3.

25 Q Of those during that time period, the ten 02:22PM

1 years that you did that work, percentage-wise what
2 would you estimate the number of farms that had
3 stacking sheds for poultry waste?

4 MR. HIXON: Object to form.

5 A I don't think I could even come close to 02:23PM
6 answering that. I don't have any idea.

7 Q Do you cut hay on your property?

8 A No, I do not.

9 Q You just graze?

10 A Yes. 02:23PM

11 Q Are you somewhat dependent upon the amount of
12 grass you can grow for purposes of grazing? Let me
13 restate it. Is it important to you to have a pretty
14 good yield of grass annually?

15 A Absolutely. 02:24PM

16 Q And in doing so, fertilization is part of what
17 is required; do you agree?

18 A Absolutely.

19 Q I'm going to ask you to assume a fact and then

20 I'll ask you a question, if you would, please. 02:24PM

21 Let's assume you have a current soil test that
22 reflects there's no need for nitrogen. Would you go
23 out and buy nitrogen and apply it?

24 MR. BOND: Object to the form.

25 A Ask that again. 02:24PM

1 Q If you have a current soil test in my
2 assumption that says that the soil as tested was
3 adequate for the level of nitrogen, would you then
4 go out and buy nitrogen and apply it?

5 MR. BOND: Object to the form. 02:24PM

6 A No, sir, I would not go buy nitrogen.

7 Q Let me ask you this question and assumption.
8 Let's assume that you have the same soil test that
9 says it needs 25 pounds per acre nitrogen. Would
10 you go out and buy nitrogen to apply it in that
11 scenario?

02:25PM

12 MR. BOND: Object to the form.

13 A I don't know that I would.

14 Q All right. Would it require maybe a greater
15 need for you under the assumption to want to buy
16 nitrogen?

02:25PM

17 MR. WILLIAMS: Object to the form.

18 A There would be more factors that I would use
19 in determining whether I would go buy nitrogen to
20 land apply.

02:25PM

21 Q If the soil tests reflected a certain
22 quantity, if you will, of nitrogen as required by
23 the levels in the soil, is there any reason for you
24 to buy more than what the soil test says is needed?

25 MR. BOND: Object to the form. 02:26PM

1 A Ask that one more time, please.

2 Q If the soil test says, for example, you need
3 20 pounds of nitrogen per acre, is there any reason
4 to buy more than 20 pounds per acre to apply to the
5 field in your opinion?

02:26PM

6 MR. BOND: Object to the form.

7 A In my opinion, no.

8 Q Okay. If a soil test that you have says that
9 there's no need for phosphorus, what need is there
10 then to apply -- what reason is there to apply more
11 phosphorus?

02:27PM

12 MR. BOND: Object to the form.

13 A Ask me that one again.

14 Q If your soil test that you currently have in
15 my assumption says that phosphorus is adequate and
16 none is needed, what, if any, reason would there be
17 to apply more phosphorus to that land?

02:27PM

18 MR. BOND: Same objection.

19 A Under that scenario there would be no reason
20 to apply more phosphorus.

02:27PM

21 Q And would you agree with me you certainly
22 wouldn't go out and buy it, would you?

23 MR. BOND: Object to the form.

24 A No, sir.

25 Q Before you had your storage shed in August of

02:27PM

1 2006, how would you store waste?

2 A Typically I wouldn't store it. I would just
3 land apply it immediately as it was removed.

4 Q Okay. If you would look to Page 354 and
5 following in this book, I want to ask you a couple
6 of questions about these forms from BMP, Inc.'s
7 project.

02:29PM

8 A Okay.

9 Q 354 has your signature on it, on a request for
10 subsidy; is that correct?

02:29PM

11 A Yes.

12 Q And this is one that occurred in October of
13 '06. Did you in fact get paid that subsidy?

14 A Yes, I did.

15 Q The next page looks to be just a duplicate of
16 the same document. So go to Page 356, if you would.
17 Can you explain to me why the grower's signature is
18 Steve Butler and you're listed as the grower?

02:29PM

19 A Yes, I can. I knew you were going to ask
20 that.

02:30PM

21 Q Is that explanation shown on Page 358 where
22 part of your tonnage was included in Green Country
23 Farms' subsidy request or am I confusing two records
24 here because of the dates?

25 A No. Those are two separate records.

02:30PM

1 Q Go back to 356 and give me your explanation of
2 why Butler is signing for you as a grower.

3 A Occasionally I'll do a lot of my business
4 through the office of Green Country Farms, receiving
5 faxes, sending faxes. As you probably noticed, the
6 same litter hauler was used --

02:30PM

7 Q Mark Murray?

8 A -- when I cleaned out, and he's the hauler
9 that handles all of Green Country Farms' litter
10 hauling or hauling from those facilities. Well, I
11 contracted with Mark Murray to come remove my litter
12 as well. Since he, as I understand it, hauls for
13 Raymond Tinney, the Tinneys more than likely got my
14 stuff mixed in with Green Country Farms' paperwork.

02:31PM

15 Since they primarily do business with Green Country
16 Farms, it's kind of out of the ordinary to have my
17 name on one of those. So it probably inadvertently
18 got sent in with some stuff for Green Country Farms
19 and Steve Butler just went through signing the forms
20 on evidently September 11th of 2006 and he
21 inadvertently signed my document.

02:31PM

02:32PM

22 Q Does that reconcile with the next page, Page
23 357, with Steve Butler for the same TAF number,
24 3209, on 9-7-06 signs the hauler invoice as grower?

25 A I don't think I have a clue what you're

02:32PM

1 asking.

2 Q Well, I'm trying to figure out why -- you
3 explained to me why you thought Steve Butler signed
4 Page 356 but it's the same TAF number, but it
5 appears on 357 this is in fact his waste being
6 hauled, isn't it?

02:33PM

7 A To be honest with you, I don't have any idea
8 what a TAF number is, what that number represents.

9 The only number that means anything to me is the
10 grower name and number. My number with BMP is

02:33PM

11 number 458. Aside from that, I don't --

12 Q Do you see the number of tons reported on both
13 of these reports being the same as 395?

14 A Yes.

15 Q It looks like it's the same transaction,
16 though, doesn't it?

02:33PM

17 A It appears to be, yes. It appears these
18 documents were both faxed from Tinney just looking
19 at the heading.

20 Q You stated earlier that you went to a
21 different pipe instead of the auger that pulled soil
22 samples in order to get a better sample as you
23 described I believe?

02:34PM

24 A Uh-huh.

25 Q And as I understood your testimony, you

02:34PM

1 consider a better sample one that might reflect a
2 lower STP level; is that a fair statement?

3 MR. WILLIAMS: Object to the form.

4 MR. BOND: Object to the form.

5 MR. HIXON: Object to the form.

02:35PM

6 A I don't know that that would necessarily mean
7 that it's a better sample, that it has a lower
8 number.

9 Q But you understand based on your testimony
10 here today that the level of phosphorus in the soil
11 would be higher at the two-inch level than it would
12 be at the six-inch level; is that correct?

02:35PM

13 A That's correct.

14 Q And you control where land application occurs
15 on your land, do you not?

02:35PM

16 A Yes.

17 Q And you pretty much know where the bulk of it
18 goes, do you not?

19 A Well, yes.

20 Q The same would be true for most any grower who
21 is in the same situation as you are, land applying
22 his own waste; correct?

02:35PM

23 A Sure.

24 Q And frankly, it would be easy enough to go to
25 certain parts of the field to pull your cores and

02:35PM

1 have some effect on your soil test phosphorus level;

2 is that a fair statement?

3 MR. BOND: Object to the form.

4 A Ask that again.

5 Q It's very possible to manipulate the amount of 02:36PM

6 soil test phosphorus in a soil test by going to

7 different parts of a field to take your samples; is

8 that a fair statement?

9 MR. BOND: Object to the form.

10 A Yes, it is possible. 02:36PM

11 Q And that's the reason why, is it not, to have

12 a, quote, representative sample? Many cores

13 throughout the field are required to be a composite;

14 is that a fair statement also?

15 MR. BOND: Object to the form. 02:36PM

16 A Absolutely.

17 Q Do you know the number of cores that should be

18 taken as recommended by the OSU Extension Center?

19 A I don't know exactly.

20 Q How long have you been disposing of birds in 02:36PM

21 the landfill through the Steve Butler dumpster?

22 MR. BOND: Object to the form of the

23 question.

24 A I don't remember exactly but I would say it

25 was the summer of 2004. 02:37PM

1 Q Do you know of anyone else who does similarly
2 what you do, bringing carcasses to the Butler
3 dumpster for removal to landfill?

4 MR. BOND: Object to the form. I don't
5 think there's any allegations in the complaint about
6 dead bird disposal.

02:37PM

7 Q You may answer.

8 A Not that I'm aware of.

9 Q Okay. Has there been any time that either
10 integrator, Peterson or Tyson, has purposely
11 withheld or delayed the delivery of birds to you for
12 what might be considered your lack of performance in
13 some way or another?

02:37PM

14 MR. HIXON: Object to the form.

15 A Absolutely not.

02:38PM

16 Q You mentioned you're a member of Poultry
17 Partners. Did you pay any dues to Poultry Partners?

18 A No, I have not.

19 Q And do you know, is Poultry Partners the one
20 paying the attorney fees for Mr. Williams to
21 represent you in this matter?

02:38PM

22 A I don't have any idea.

23 Q Have you been told you're going to be paying
24 the fees for Mr. Williams?

25 A Nothing has ever been discussed as far as who

02:38PM

1 is going to be paying the fees. I've not received a
2 bill or a statement as of today.

3 Q All right. Did you sign any kind of written
4 contract with Mr. Williams?

5 A No, sir, I did not. 02:39PM

6 Q How long have you been a member of Poultry
7 Partners?

8 A I don't recall the exact date when Poultry
9 Partners began its first membership drive but it
10 would have been at the first meeting that they held. 02:39PM
11 I believe it was in 2004 but I don't remember the
12 date.

13 Q Look at Page 1962 in Exhibit 2, please.

14 A Okay.

15 Q Is the black spot in the bottom of that page 02:40PM
16 supposed to be there or is this an intentionally
17 redacted document that I'm looking at here?

18 A I don't know without looking at the actual
19 scale ticket that I can answer that. I would assume
20 it's not anything that's been hidden purposely. 02:40PM

21 Q What is the live scale ticket, if you would,
22 please?

23 A A live scale ticket is the scaled weights of
24 the birds when they're hauled to processing. This
25 particular scale ticket is kind of unique in the 02:41PM

1 sense that it went to a different processing plant,
2 if I'm not mistaken, than the normal processing
3 plant in Noel.

4 Q So the weigh-in occurs after it leaves your
5 farm but before they're removed for processing?

02:41PM

6 A Yes.

7 Q This is a weight showing the live weight on
8 the truck; is that correct?

9 A Yes, it is.

10 Q As far as you know, you don't know how that
11 black stuff got on that page?

02:41PM

12 MR. WILLIAMS: If it had been redacted, it
13 would say redacted.

14 Q Look at Page 772, if you would, please. This
15 letter from Peterson Farms in March of 1996 says
16 it's once again time for the quarterly growers
17 meeting. Is that something that normally occurs
18 with Peterson growers, a quarterly meeting?

02:42PM

19 A They were not regularly held.

20 Q All right. So it would be a sporadic
21 quarterly meeting of growers?

02:42PM

22 MR. HIXON: Object to form.

23 A It's been my experience from being in the
24 poultry industry the way I have that the companies
25 are always reluctant to get a large group of growers

02:43PM

1 together. Because there are so many issues, so many
2 different issues that could arise, it's hard to
3 maintain a controlled meeting with the growers. So
4 historically they tried to refrain from doing that.

5 Evidently this was a period of time -- I don't know
6 if you could say on a trial basis but they attempted
7 to have grower meetings and make them an

02:43PM

8 educational-type meeting to where the environment
9 could be controlled, yet give them many

10 opportunities, as you can see, for growers to attend
11 at various times to try to accommodate everyone's
12 schedule.

02:44PM

13 Q And when you say environment being controlled,
14 you're talking about the environment of the meeting?

15 A The environment of the meeting, yes. It would
16 be tough to have a group of 250 people show up to a
17 meeting and maintain a controlled meeting.

02:44PM

18 Q As a service rep for Peterson Farms, was it
19 ever your duty or requirement to obtain copies of
20 nutrient management plans from the growers?

02:45PM

21 A Not that I recall.

22 Q Was it ever part of your duties as a service
23 rep to inspect and determine if a nutrient
24 management plan was in fact present on the farm?

25 A Not that I recall.

02:45PM

1 Q Have you as a contract grower been requested
2 to provide soil samples at any time to your
3 integrator?

4 A Not that I recall.

5 Q Have you as a contract grower been required to 02:45PM
6 present a nutrient management plan to the
7 integrator?

8 A Not that I remember.

9 Q Have you ever as a contract grower
10 participated in a survey or questionnaire that would 02:46PM
11 reflect how much in your operation or I'm sorry, in
12 your operation how much poultry waste was being
13 generated?

14 A I don't recall ever seeing any kind of survey.

15 Q In your opinion does the integrator have the 02:46PM
16 right to inspect any of your growing operation
17 records?

18 MR. HIXON: Object to the form.

19 MR. WILLIAMS: Object to the form.

20 A In my opinion I don't feel that they have the 02:47PM
21 right to inspect those records as long as I'm
22 following what's required of the law.

23 Q Has there been a time where either of your
24 integrators that you've worked with have requested
25 to see records that you maintain in your growing 02:47PM

1 operation?

2 A Not that I recall.

3 Q I believe early on in your testimony we talked

4 a little about the fact that you have applied

5 herbicides. How often do you do that?

02:48PM

6 A Typically it's in the spring time of the year.

7 Q Most every spring?

8 A Most every spring, yes.

9 Q All right. Do you know what kind of herbicide

10 you apply?

02:48PM

11 A It's usually 2,4-D Amin or Grazon P plus D.

12 Q The last one was?

13 A Grazon, G-R-A-Z-O-N I believe, P plus D.

14 Q P plus D?

15 A Yes.

02:48PM

16 MR. GARREN: Let me take a break real quick

17 and I think I'm just about ready to wind up.

18 (Following a short recess at 2:48 p.m.,

19 proceedings continued on the Record at 2:53 p.m.)

20 Q Mr. Pigeon, I have just a couple more

02:52PM

21 questions. You're familiar with a case, the

22 Eucha-Spavinaw regarding the City of Tulsa. You've

23 heard about it?

24 A I've heard of it.

25 Q And your father operates his farm within that

02:53PM

1 watershed?

2 A Yes.

3 Q As a result of that case, have you been
4 required by your integrator to change the method of
5 your operation in any way?

02:53PM

6 MR. BOND: Object to the form.

7 A I don't think I follow you.

8 Q Has the integrator, Tyson, requested you to
9 make any changes in the way you have normally
10 operated your farm prior to that consent order in
11 the Eucha-Spavinaw?

02:53PM

12 MR. BOND: Object to the form.

13 MR. WILLIAMS: You're asking about his
14 operations, though?

15 Q I'm talking about your operation, and your
16 integrator, Tyson, have they made any requirements
17 of you to change the method of your growing
18 operation and in particular your land waste
19 application procedures as a result of

02:53PM

20 Eucha-Spavinaw?

02:53PM

21 A No.

22 MR. GARREN: I have no other questions.

23 MR. WILLIAMS: I pass the witness.

24 CROSS EXAMINATION

25 BY MR. BOND:

02:54PM

1 Q Mr. Pigeon, my name is Michael Bond. I
2 represent Tyson Foods, Tyson Chicken, Tyson Poultry
3 and Cobb-Vantress in this case. I just have a few
4 questions for you. I will try not to use up any
5 more of your inside time today.

02:54PM

6 A Thank you.

7 Q With regards to your farm where your poultry
8 operation is at, who owns that farm?

9 A Who owns the farm where my poultry operation
10 is?

02:54PM

11 Q Yeah.

12 A I do.

13 Q Do you own everything on that farm?

14 A Everything as in --

15 Q Let me try to clarify that. You own the
16 poultry barns that are on that farm?

02:54PM

17 A Yes.

18 Q You own the equipment that you use on that
19 farm?

20 A Yes.

02:54PM

21 Q And is there a house on that farm?

22 A Yes.

23 Q You own that house?

24 A Yes.

25 Q Do you have the joy of owning all that free

02:54PM

1 and clear or do you have a lender involved?

2 A I still owe some money.

3 Q So somebody has a mortgage on that?

4 A Yes.

5 Q Okay, and is that mortgage holder a bank?

02:55PM

6 A Yes.

7 Q Is that bank in any way affiliated with Tyson

8 Foods?

9 MR. GARREN: Object to the form, lack of

10 predicate.

02:55PM

11 Q Who is the bank?

12 A Arvest Bank.

13 Q Okay. I'm assuming that you generate an

14 electricity bill from your poultry operations?

15 A Yes.

02:55PM

16 Q Who pays that electricity bill?

17 A I do.

18 Q And I think you testified before that you

19 don't have any employees that work on your farm?

20 A That's correct.

02:55PM

21 Q Okay. Have you ever had any employees work on

22 your farm?

23 A I have had on very few occasions.

24 Q Okay, and on those few occasions did you hire

25 that person to work on your farm?

02:56PM

1 A Yes.

2 Q Okay. So did you pay that person?

3 A Yes, I did.

4 Q Does Tyson offer you any benefits like health

5 care and a profit sharing plan, all that kind of

02:56PM

6 stuff?

7 A No.

8 Q Do they withhold any FICA or Social Security

9 from the check you get when your flock is sold?

10 A No.

02:56PM

11 Q You don't get paid by the hour, do you --

12 A No.

13 Q -- from Tyson? Let me clarify that.

14 A No.

15 Q You're not paid a salary from Tyson, are you?

02:56PM

16 A No.

17 MR. GARREN: Are you referring to that form

18 of the question currently?

19 MR. BOND: Right now.

20 Q Is the check you receive from the settlement

02:57PM

21 of your birds the same every time?

22 A The amount?

23 Q Yeah.

24 A No.

25 Q If you know, why is the amount different?

02:57PM

1 A We're paid based on how well the birds
2 perform, basically how well I do my job in getting
3 the birds to market.

4 Q And that's a question I have for you. If you
5 can, describe for me what is your job with respect
6 to those birds.

02:57PM

7 A My job is to provide those birds with the
8 best, healthiest environment that I can and raise
9 those birds with the cheapest cost, least amount of
10 feed, least amount of electricity, least amount of
11 fuel and still raise a healthy bird and get them to
12 the processing plant.

02:58PM

13 Q And I know I've heard you testify that you've
14 got a service tech for Tyson?

15 A Yes.

02:58PM

16 Q Who is your service tech?

17 A John Kyle.

18 Q Okay, and does he come out and make
19 recommendations on how to help you achieve the goal
20 you just described?

02:58PM

21 A Yes, he does.

22 Q Do you always follow those?

23 A No, I do not.

24 Q Sometimes you do exactly what you think you
25 should do?

02:58PM

1 MR. GARREN: Object to the form.

2 A Yes, I do.

3 Q Okay. He's never withheld birds from you for
4 doing that; right?

5 A No, he has not.

02:58PM

6 Q Does Tyson tell you when to cake out your
7 houses?

8 A No, they do not.

9 Q Does Tyson tell you when to clean out your
10 houses?

02:59PM

11 A No, they do not.

12 Q Does Tyson tell you where to land apply
13 poultry litter?

14 A No, they do not.

15 Q If you can, would you turn in the binder,
16 Exhibit 2, to Page 338, and I think you talked about
17 that with Mr. Garren a little while before and the
18 title of that document is animal waste management
19 plan and it says Jim Pigeon poultry operation; is
20 that right?

02:59PM

03:00PM

21 A Yes.

22 Q I think you previously testified that you to
23 the best of your ability try to follow this plan?

24 A Yes.

25 Q Okay. Did you write this plan?

03:00PM

1 A No, I did not.

2 Q Do you know who wrote it?

3 A I think the guy's name is Ed Abernathy.

4 Q Do you know who Ed Abernathy works for?

5 A I think he is somehow associated with the 03:01PM
6 Oklahoma Department of Agriculture.

7 Q Okay.

8 A But I'm not 100 percent on that.

9 Q Does he come out and meet with you?

10 A He did, yes. 03:01PM

11 Q He did? You mentioned another name of a guy,
12 John Littlefield?

13 A Yes.

14 Q What does John Littlefield do?

15 A John Littlefield is the ODAFF inspector that I 03:01PM
16 deal with.

17 Q Do you know if he's involved in preparing this
18 plan?

19 A Not that I'm aware of.

20 Q You think Mr. Abernathy is who you believe -- 03:01PM

21 A I believe so, yes.

22 Q And you believe he works for ODAFF?

23 A I'm not 100 percent sure but I believe so.

24 Q Okay. Do you know where they get -- for
25 example, on Page 340 under Section B, do you know 03:02PM

1 where Mr. Abernathy gets this information?

2 MR. GARREN: Object to the form. You're
3 talking about the entire paragraph?

4 MR. BOND: Yeah.

5 A Could you ask that again? 03:02PM

6 Q Do you know where the information contained in
7 Section B on Page 340 comes from?

8 A I believe when I met with him, he had a
9 questionnaire that we went down real quickly and
10 filled out, and I think a lot of those points in 03:03PM
11 that paragraph were probably obtained through that
12 questionnaire.

13 Q Okay. Just when you met with him, he had a
14 questionnaire and you guys went through and he got
15 some information about your farm? 03:03PM

16 A Yes.

17 Q Okay. Does Mr. Abernathy or ODAFF send you
18 this plan and ask you to look at it and see if it's
19 right or do they just send it to you?

20 A If I remember correctly, he called to notify 03:03PM
21 me that he had completed the plan and wanted to meet
22 with me to go over the plan. We met again and he
23 briefly skimmed through it, kind of hit the high
24 points, if you will, and that was pretty much the
25 extent of that meeting. 03:04PM

1 Q So he explained the plan to you?

2 A From what I remember, yes.

3 Q Okay. Let's take a look at Page 248 in

4 Exhibit 2, and this is the grower production manual

5 that you talked about with Mr. Garren, Tyson broiler

03:04PM

6 production manual; correct?

7 A Yes.

8 Q And on Page 250 Bates number, the second

9 paragraph, if you'll recall Mr. Garren had you read

10 or he read to you the first sentence of that; do you

03:05PM

11 recall that?

12 A I think I remember reading that.

13 Q Okay. If you wouldn't mind, could you read

14 into the Record the second sentence starting with

15 the word aside?

03:05PM

16 A Aside from your contractual obligations, how

17 you manage and run your farm is your decision.

18 Q Do you agree with that statement?

19 A Yes, I do.

20 Q Would you read the next sentence?

03:05PM

21 A Tyson will provide technical advice and other

22 forms of assistance.

23 Q Do they do that?

24 A Yes, they do.

25 Q And can you read the next sentence?

03:05PM

1 A Ultimately, however, you are in control and
2 responsible for your farming operation.

3 Q And do you agree with that?

4 A 100 percent.

5 Q Okay.

03:06PM

6 MR. BOND: I have no further questions.

7 Thank you.

8 CROSS EXAMINATION

9 BY MR. HIXON:

10 Q My name is Philip Hixon and I represent

03:06PM

11 Peterson Farms. While you're at Pigeon 250, I

12 realize this is Tyson's broiler production manual

13 but these statements that you just read, would any

14 of these be different for Peterson Farms?

15 MR. GARREN: Object to the form.

03:06PM

16 A I can't say 100 percent.

17 Q When I say that, let me clarify. What I'm

18 asking is, when you were contracting with Peterson

19 Farms to grow chickens for Peterson Farms, you were

20 ultimately responsible for the production on your

03:06PM

21 farm?

22 A Yes.

23 MR. GARREN: Object to the form as leading.

24 Q When you were growing for Peterson, did

25 Peterson ever tell you when or how to clean out your

03:06PM

1 house, your houses?

2 A No, they did not.

3 Q Did they tell you when to apply your litter?

4 A No, they did not.

5 Q Or where to apply your litter?

03:07PM

6 A No.

7 Q Did they instruct you to sell your litter?

8 A No.

9 Q Did they instruct you you could not sell your
10 litter?

03:07PM

11 A No.

12 Q I believe that you testified earlier that you
13 did get some minimum specifications for your poultry
14 house from Peterson; is that correct?

15 A Yes.

03:07PM

16 Q I also believe you testified that you built
17 your house, houses beyond those specifications?

18 A Yes.

19 Q Did you go beyond those specifications at the
20 request of Peterson?

03:07PM

21 A No.

22 Q That was your decision to build above the
23 minimum specifications?

24 A Yes, it was.

25 Q And was that more expensive to build beyond

03:07PM

1 the minimum specifications?

2 A Very much so.

3 Q Did Peterson reimburse you for any of that?

4 A Only through grower pay.

5 Q For increased production?

03:07PM

6 A For increased production.

7 Q And the reasons you went beyond the minimum

8 specifications was for production purposes?

9 A Yes.

10 Q Okay. We talked about John Littlefield. You

03:08PM

11 testified that he is your ODAFF inspector?

12 A Yes.

13 Q What does Mr. Littlefield do as your

14 inspector, poultry inspector?

15 A Typically on an annual basis he makes a visit

03:08PM

16 with me to inspect my records.

17 Q What records does he inspect?

18 A That's my litter application records.

19 Q Would that be some of the same records we've

20 looked at today?

03:08PM

21 A Yes, they would be.

22 Q I also understood you changed your soil

23 sampling technique after counseling with Mr.

24 Littlefield; is that correct?

25 A It wasn't necessarily his advice but it was in

03:09PM

Page 185

1 visiting with him that he described the tools that
2 he had used in the past, which got me to thinking
3 and doing some research that maybe it would be
4 easier for me to take the samples as well as get
5 better results by using a different tool.

03:09PM

6 Q So the tool you're using now, is that
7 something similar to what Mr. Littlefield described?

8 A Yes.

9 Q Okay. Turn to Page 766 in Exhibit 2.

10 A Okay.

03:11PM

11 Q I believe Mr. Garren had gone over this
12 document with you earlier with regard to the
13 postscript. If you could, just take a few seconds
14 to read over this entire document.

15 A Okay.

03:11PM

16 Q Would you agree that the message in this
17 letter is preparation of poultry houses for delivery
18 of chicks?

19 A The purpose of the letter; is that what you're
20 asking?

03:12PM

21 Q It's advising some steps to prep your house
22 for chick delivery?

23 MR. GARREN: Objection to form, misstates
24 the letter.

25 Q Let's skip back down to the postscript. I

03:12PM

1 think Mr. Garren had you read or read into the
2 Record the first part of that, the spring clean-out
3 season is coming soon.

4 A Yes.

5 Q And the second sentence of that, please notify 03:13PM
6 Beth before you clean out so you'll have enough time
7 to prepare before you receive the chicks?

8 A Yes.

9 Q Does that have anything to do with litter
10 application? 03:13PM

11 A No.

12 Q Does it have to do with preparing your house
13 for chickens?

14 A Somewhat.

15 MR. HIXON: That's all I have. 03:13PM

16 REDIRECT EXAMINATION

17 BY MR. GARREN:

18 Q Mr. Pigeon, real quickly, what research did
19 you conduct in making the decision to change your
20 soil sampling tool? 03:13PM

21 A Research, mainly was cost. I did some
22 searching on the Internet.

23 Q Cost as to what?

24 A Cost of the tool.

25 Q That's basically it? You weren't doing 03:14PM

1 research to determine the effectiveness of this tool
2 over the tool you were using; is that a fair
3 statement?

4 A No. I spoke with Mr. Littlefield about -- you
5 know, had him describe the tool to me because he did
6 not have it with him at that time.

03:14PM

7 Q I understand that, but the question -- your
8 statement was you then did research?

9 A Yes.

10 Q And I'm asking you what research you did and
11 what was the purpose?

03:14PM

12 A The research I did was looking at cost of the
13 instruments in an effort to possibly purchase one of
14 these tools.

15 Q Okay. With regard to the minimum
16 specifications for the barns, you said you exceeded
17 those minimum specifications?

03:14PM

18 A Yes.

19 Q In doing so, did you add more equipment to the
20 barn that's not otherwise required?

03:15PM

21 A Not necessarily more equipment but different
22 equipment.

23 Q And as a result of adding different equipment,
24 were you given a higher pay rate than if you didn't
25 have that different equipment?

03:15PM

1 A No, I was not.

2 Q So the pay rate is the same regardless of
3 having the equipment you chose to put on it?

4 A At that time, yes.

5 Q Were you given any subsidies related to the 03:15PM
6 improvements you made over and above the minimum
7 requirements?

8 A At the time they were built, no.

9 Q Did you receive some later as a result of
10 having those improved pieces of equipment? 03:15PM

11 A At a certain point an addendum pay was added
12 onto the contract for houses being updated to tunnel
13 ventilation.

14 Q And you qualified for that?

15 A Yes, I did. 03:15PM

16 Q As a result, your pay then was raised;
17 correct?

18 A Yes, at that point.

19 Q Was the service tech, John Kyle, your service
20 tech when you were notified of the possibility of 03:16PM
21 intensified management program?

22 A I believe so, yes.

23 Q Has either Peterson or Tyson at any time
24 supplemented or subsidized your electrical bills?

25 A Electrical bills? 03:16PM

1 Q Yes, sir.

2 A Not that I'm aware of.

3 Q Only thing they've done is LP gas?

4 A Yes.

5 Q As you've testified earlier.

03:16PM

6 MR. GARREN: No other questions.

7 MR. WILLIAMS: He'll read and sign.

8 (Whereupon, the deposition was

9 concluded at 3:16 p.m.)

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SIGNATURE PAGE

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I, Jim Lance Pigeon, do hereby certify
that the foregoing deposition was presented to me by
Lisa A. Steinmeyer as a true and correct transcript
of the proceedings in the above styled and numbered
cause, and I now sign the same as true and correct.

WITNESS my hand this _____ day of
_____, 2007.

JIM LANCE PIGEON

SUBSCRIBED AND SWORN TO before me this
_____ day of _____, 2007.

Notary Public

My Commission Expires:

1 C E R T I F I C A T E

2

3 STATE OF OKLAHOMA)
4) ss.
5 COUNTY OF TULSA)

6

7 I, Lisa A. Steinmeyer, Certified
8 Shorthand Reporter within and for Tulsa County,
9 State of Oklahoma, do hereby certify that the above
10 named witness was by me first duly sworn to testify
11 the truth, the whole truth and nothing but the truth
12 in the case aforesaid, and that I reported in
13 stenograph his deposition; that my stenograph notes
14 were thereafter transcribed and reduced to
15 typewritten form under my supervision, as the same
16 appears herein.

17 I further certify that the foregoing 190
18 pages contain a full, true and correct transcript of
19 the deposition taken at such time and place.

20 I further certify that I am not attorney
21 for or relative to either of said parties, or
22 otherwise interested in the event of said action.

23 WITNESS MY HAND AND SEAL this 7th day of
24 June, 2007.

25

LISA A. STEINMEYER, CRR
CSR No. 386

CORRECTIONS TO THE DEPOSITION OF
JIM LANCE PIGEON

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